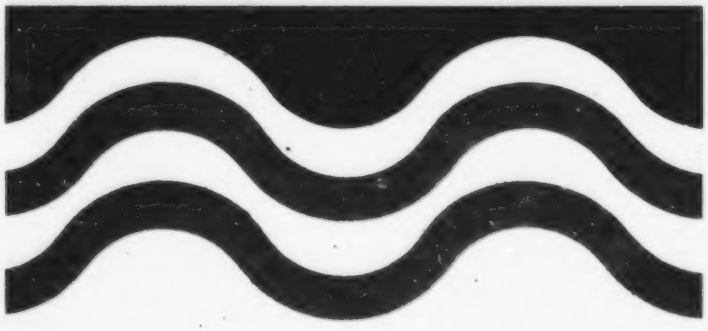

NOVA SCOTIA'S ENVIRONMENT ACT

Legislative Review Process

2000

COMMITTEE REPORT

101-01260/

NOVA SCOTIA'S ENVIRONMENT ACT

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2000

REPORT

OCTOBER 2000

NOVA SCOTIA
Department of the Environment

Further information about the legislative review process can be obtained on the Nova Scotia Department of the Environment website:
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or email us at
ecs@gov.ns.ca

Nova Scotia's Environment Act
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2000

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The Committee's Perspective

In many ways Nova Scotia's *Environment Act* is an innovative and progressive piece of environmental legislation. Its purposes are noble and its powers are substantial. It was one of the first statutes in North America to incorporate and define such important sustainable development principles as precaution, stewardship, pollution prevention, and ecological value. It provides the Minister of the Environment with wide-ranging authority to protect the environment and to use tools such as economic instruments to achieve environmental quality objectives. It advances opportunities for citizens to contribute to our province's shared environmental aspirations by requiring the government to inform the public and seek their input into key areas such as environmental assessment and regulatory change.

It was with this comprehensive statute as our basis, that the Legislative Review Advisory Committee entered into its mandate to complete a review of this act and the regulations. Towards that end we undertook a province-wide public consultation process, invited and reviewed more than 100 written submissions, and spent considerable time discussing and deliberating on our recommendations. We reached strong consensus on both our general perspective and specific recommendations.

Before discussing our recommendations further, we would like to thank the many groups and individuals who took the time to consider the issues and provide their input. Although it is not possible for us to integrate every public comment and recommendation into this report, we strongly encourage the Minister to closely consider all of the input. To that end, we have included a summary of all comments as an appendix to this report. In addition, the committee would like to acknowledge and thank the departmental staff involved in this review, including those who assisted with the public meetings and those who provided important background information and so willingly answered the committee's questions.

We are not the first committee to consider the environmental challenges that face our province; nor are we the first group to ask the citizens of Nova Scotia to assist in doing so. We appreciated and referred to the excellent foundation of these predecessor groups, which most notably included:

- The Minister's Task Force on Clean Water
- The Minister's Task Force on Clean Air
- The Nova Scotia Round Table on Environment and Economy, Sustainable Development Subcommittee
- The Nova Scotia Round Table on Environment and Economy, Public Consultation Committee
- The Solid Waste Management Strategy Public Consultation Committee

Our committee expected to issue a report merely recommending amendments that would build upon and refine the current Act. As the process unfolded, however, our committee experienced a growing sense of discomfort about how to effectively discharge our duties. Although our perception of the capability of the Act to serve its environmental objectives remains intact, we are concerned that this potential is not being realized. We believe that a number of generally modest adjustments to the Act would theoretically make it even more effective, but more is needed.

We now recognize that to assess the Act's likely effectiveness, it cannot be disassociated from its practical context. The *Environment Act* cannot be looked at outside of its relationships to current government priorities and policies, dedicated human and material resources, organizational characteristics of the Department of the Environment, and other legislation, government departments, and stakeholders. In environmental assessment terms this could be viewed as the Act's "ecological context," its setting among the variety of relationships that affect it and are affected by it. When viewed in this way, we have concluded that changes to the Act without corresponding changes to the context in which it manifests will not provide

conditions under which the Act and the Department will be able to effectively do their job, "... to support and promote the protection, enhancement and prudent use of the environment ..." (1994–95, c.1, S. 2).

Why has the *Environment Act* not translated into the actions and benefits it is capable of? Why is the public critical of the Department's responsiveness to environmental concerns? Why are key strategies stalled, voluntary and regulatory compliance initiatives constrained, and enforcement actions weak? Our committee has considered these questions and recognizes that the answers are not simple. We have identified a number of factors that we believe contribute to this unsatisfactory condition. Although each one of these factors could receive substantial analysis, we offer only a brief summary in order to frame the remainder of our report.

- The Act, and subsequently the Department, suffers from a lack of specific time-bound objectives and deliverables. The most notable example of substantive progress during the past five years has been in the area of waste-resource management. It does not appear to be coincidental that this section contains the only time-bound objective identified in the Act, a commitment to achieving "a fifty per cent solid-waste diversion goal for the year 2000" (1994–95 c.1, S. 93 (1)). In other sections, such as those directed towards air quality or water resource management, time-bound commitments are not identified and strategies have not developed to the point of adoption and implementation.
- In the absence of direct commitments to time-specific actions within the Act, our provincial governments have not had the bureaucratic or political will to achieve significant implementation. We recognize that many of the issues associated with the Act are contentious. Without focused leadership it is not likely that these issues will resolve into definitive policy and programs. After talking with the Department's senior management, we perceive that a clear sense of common direction is lacking. Indeed, there appears to be significant disparity in views and a lack of intradepartmental cohesion. This inevitably inhibits purposeful progress.
- There also appears to be a lack of accountability for action and enforcement under the Act, and a significant lack of support for fulfilling the Department's mandate at the political level. Indeed, there seems to be little incentive for action and even less accountability for lack of action. There appears to be uncertainty as to the Department's willingness to exercise authority under the Act, particularly with regard to potentially significant adverse effects. We suspect that this is not unique to the Department of the Environment, but reflects a risk-adverse culture within the public service generally. Although the Department's emphasis on cooperative solutions is commendable, in at least some instances, this effort to avoid confrontation has resulted in protracted unresolved issues, much to the dissatisfaction of most parties. Throughout our consultations the public voiced a lack of confidence in the Department's ability or intention to act decisively in accord with the authorities within the Act. In short, in some cases there is too much process and not enough action. Current levels of training and guidance may also contribute to hesitation to act.
- There are insufficient resources dedicated to implementing the *Environment Act*. As with all aspects of government, resources are limited more than ever. In the case of the *Environment Act*, where a wide range of specific actions, strategic policy initiatives, and enforcement provisions are called for, these limitations have resulted in severe inhibitions and promise to result in even further constraints. Limited resources are not the most important factor, however, particularly since the means to generate resources through application of the principles of user pay and stewardship are available under the Act.
- A number of the tools available to the Minister under the Act are not being utilized, such as the ability to engage economic instruments to enforce stewardship provisions or to expedite clean-up of contaminated sites. Likewise, there appears to be little impact by the Minister on the activities and policies of other departments despite one of the Act's stated purposes, the integration of environmental policy initiatives between departments and in government generally.

These limitations are highlighted by the specific circumstances surrounding a number of the key policy files within the Department's mandate, which are outlined here by topic.

Water

In 1990–91 the Minister's Task Force on Clean Water held 14 public meetings and four workshops to examine water-quality issues. The Task Force on Clean Water was provided the mandate to "develop a new Water–Resource Management Strategy." The task force made numerous recommendations to lay a foundation for a Water–Resource Management Strategy. In 1995, however, a completed strategy still did not exist, so the *Environment Act* required that the Minister establish a Water-Resource Management Strategy for the province. A draft strategy was developed in 1999, but implementation has been delayed, pending revisions and formal approval.

Air

In 1991 the Minister's Task Force on Clean Air held six public meetings to examine the air quality in Nova Scotia and to establish a program to meet Nova Scotia's future air-quality needs. The task force established three primary goals for air-quality management: (1) to work to attain desirable levels of ambient air quality; (2) to minimize the release of toxic chemicals to the atmosphere; and (3) to reduce emissions of air contaminants that have impacts of global or regional significance. To that end, the task force made 70 recommendations, many of which supported the development of an Air Pollution Prevention Program for the province. Although the *Environment Act* established three requirements of the Minister in the area of air quality [1], it did not mandate the Minister to establish an Air Pollution Prevention Program. This lack of a clear mandate to implement an air-quality management regime has resulted in little progress. Most of the powers for action mandated within the Act have not been exercised and a comprehensive Air Pollution Prevention Program is still just a theoretical objective.

Waste

In 1994 the Solid Waste Management Strategy Public Consultation Committee consulted with the public on issues surrounding the management of solid waste. They conducted numerous stakeholder workshops in communities across Nova Scotia, and summarized their findings in the report *Toward a Solid Waste Management Strategy for Nova Scotia*. The input received during this process was used by the Department of the Environment to develop the Solid Waste-Resource Management Strategy.

The Solid Waste-Resource Management Strategy, although controversial, is considered to be one of the key successes of the Department of the Environment, and the *Environment Act*, over the past five years. Given the specific and aggressive time-bound goal contained in the Act (50 per cent diversion by the year 2000) the Solid Waste-Resource Management Strategy and the regulations that implemented its goals were tabled in less than one year, and the program was assertively implemented. At the same time, the second thrust of the strategy, industry stewardship agreements, were not mandatory or required in any specific time and therefore have largely not been achieved. This has been unfortunate given the wide-ranging impacts equitable stewardship could address and the opportunities these agreements would provide to fund the strategy's broader objectives.

Enforcement

In 1991 the Department of the Environment initiated a public consultation process on enforcement of environmental law in the province. A questionnaire was sent out to members of the general public, and 561 responses were received. The survey included a total of 14 questions. The first question in the survey related directly to the role of enforcement: "What are the characteristics of effective enforcement of environmental law?" The highest number of respondents to this question ranked "strictly enforce" as the most important characteristic of the effective enforcement of environmental law. Nova Scotians also indicated that "Government should establish standards and regulations and impose fines for offences" as the most important means of taking action to protect the environment.

Despite this message to our government on the importance of strict enforcement of environmental law as a means of ensuring environmental protection, there has been only small progress. In 1995, the Nova Scotia *Environment Act* developed broad powers of inspection and enforcement to ensure that environmental protection was paramount. However, in our discussions with both the public and staff of the Department, we identified a lack of support for use of broad inspection and enforcement powers by staff, as well as public frustration with this approach. The Department does not maintain an enforcement and compliance policy and, therefore, has no means of communicating to the public or the regulated community their priorities for enforcement or their approach to this most important task.

1. Section 111 (1) The Minister shall
(a) establish Provincial ambient air-quality standards or objectives necessary for the protection of the environment;
(b) establish performance specifications and standards for air-quality testing and monitoring; and
(c) maintain inventories and establish reporting requirements for emissions of air contaminants.

Sustainable Development

In 1991 a subcommittee of the Nova Scotia Round Table on Environment and Economy held eight workshops across the province to discuss sustainable development. The result of the committee's efforts was the 1992 *Sustainable Development Strategy for Nova Scotia.* The strategy lays a foundation for the sustainable management of key natural resources, such as air, water, soil, and biological diversity. The strategy, developed by the citizens of Nova Scotia, provided a unique opportunity for the Government of Nova Scotia to take a leadership role in moving the province toward a more sustainable future. In 1995 the Government of Nova Scotia issued the one and only progress report on the implementation of the Sustainable Development Strategy.

The Nova Scotia Round Table on Environment and Economy has virtually been disbanded. The Round Table has not met for two years, largely because the Premier and the Ministers could not identify a *convenient* date to meet with the membership or confirm new members. The government has also eliminated the modest budget for the Round Table. Now, the government has announced its intention to develop a new "Green Plan." It is not clear whether the excellent platform developed in this earlier effort will be utilized as a basis for this Green Plan.

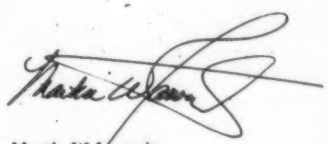
The Sustainable Development Strategy recommended that ongoing state of the environment reporting would be an important tool to indicate progress and demonstrate environmental and economic improvement. To that end, the *Environment Act* requires the government to provide Nova Scotians with a periodic report on the state of the environment in the province. The first and only partial report was issued in 1998 and focused on three environmental aspects of the province. In the 2000 budget, the government eliminated funding for this report, leaving Nova Scotians without an easily accessible and reviewable means to evaluate and monitor environmental progress.

Summary

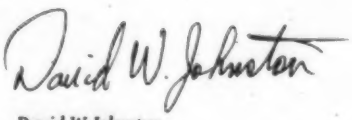
The Legislative Review Advisory Committee has concluded that the *Environment Act* is only as potent as the intention within government to utilize it. For a number of years the political climate has not inspired assertive enforcement of the Act, or significant progress on key environmental commitments. We believe that these foundation issues must be resolved if the Act is to be utilized in accord with its purposes. We believe that it is important, indeed essential, for our *Environment Act* to be effective. While Nova Scotia has not recently faced the types of environmental emergencies that have shocked and galvanized other communities in Canada and around the world, we ignore our environmental progress and a shift towards sustainable development at our peril. The health of our citizens and the long-term viability of our society are based, in great measure, on the state of our environment and its inextricable relationship to genuine progress – towards a society abundant in health, prosperity, and natural wealth. We hope that our recommendations regarding the *Environment Act* will be viewed in this context, as a means of focusing attention on what can be done not only to 'tune' our environmental laws, but to rededicate our efforts towards meaningful environmental and economic sustainability.

Legislative Review Advisory Committee Members:

Lisa J. Mitchell (Chair)
Paradise



Martin W. Janowitz
Halifax



David W. Johnston
Port Hawkesbury

Legislative Review Process

view

On January 11, 2000, the Legislative Review Advisory Committee began the process to conduct a review of the *Environment Act* and regulations as prescribed in Section 174 of the Act.

Review of Act and regulations

174 The Minister shall appoint an advisory committee to initiate a comprehensive review of this Act and the regulations within five years of its coming into force and the committee shall submit to the Minister, within six months of initiating the review, a report that includes amendments, if any, recommended by the committee. 1994–95, c. 1, S. 174

The Department of the Environment prepared and distributed a *Public Discussion Paper*, designed to identify issues and stimulate discussion on key areas within the Act and regulations. Every attempt was made to encourage and involve the public in the ensuing consultation process – press releases, posters, website, public library notices, newspaper ads, as well as radio clips were all used.

Table 1. Public Meetings

Location	Date
Yarmouth	April 11
Bridgewater	April 12
Truro	April 17
Sydney	April 18
Port Hawkesbury	April 19
Kentville	May 1
Halifax	May 2

The Advisory Committee hosted public meetings in seven communities across the province (refer to Table 1) in April and May to hear first hand public input and suggestions for improving environmental legislation in Nova Scotia. Submissions in writing were also invited for consideration by the committee. In total, 102 written submissions were received, and a summary of these is found in Appendix 1. The original submissions are retained in the Department of the Environment library for reference. In addition, at the completion of the review, the submissions were forwarded to the appropriate departmental staff for consideration in future reviews. The Advisory Committee reviewed the oral and written submissions made by the public (refer to Appendix 2 for a list of 213 participants), met with Department of the Environment staff to obtain background information, and then discussed the issues. The public submissions include many valuable and detailed suggestions for revisions to the legislation and the Advisory Committee refers the Minister of the Environment directly to these submissions for review and consideration. From this information, the Advisory Committee has prepared 46 specific consensus recommendations for consideration by the Minister. The committee often supplements these recommendations with "Committee Comments" and, where appropriate, provides "Proposed Amendments" to the legislation. The committee recognizes that the text of these proposed amendments may require significant refinement. They are presented here to help illustrate the committee's recommendations.

Advisory Committee

Each of the committee's recommendations [2] is described in detail in the appropriate part of this report and is outlined here for reference, in sequential order. Although the Advisory Committee believes that all of their recommendations have value, we would like to emphasize the need to consider them in the context of "The Committee's Perspective" stated at the beginning of this report.

List of Recommendations

Part I • Introduction

Recommendation 1

Streamline and focus the Purpose section.

Recommendation 2

Modify key definitions: "adverse environmental effect" and "environmental effect."

Recommendation 3

Where applicable, begin each part of the Act with specific objectives that, where practical, are time-bound and measurable.

Part II • Administration

Part III • Education and Research

Recommendation 4

Link significant "Minister shall" clauses to specific, time-bound deliverables.

Recommendation 5

Modify and realign the "Duties of the Minister" (Section 8 (2)).

2. The Advisory Committee did not make specific recommendations on Parts VII, XII, XIII, XIV, XV, XVI, XVIII, and XIX.

Recommendation 6

Consolidate and enhance public participation opportunities.

Recommendation 7

Re-establish the Round Table on Environment and Economy, with a renewed government commitment.

Recommendation 8

Specify scope and time frame for the Minister to report to the public regarding the state of the province's environment (modify Section 16).

Recommendation 9

Rejuvenate the Environmental Trust Fund and secure ongoing sources of revenue.

Recommendation 10

Require mandatory reviews of the *Environment Act* and regulations every seven years. (Also maintain ongoing public review of regulations in accordance with S. 26.)

Part IV • Environmental Assessment Process

Recommendation 11

Conduct a comprehensive review of the environmental assessment process.

Recommendation 12

Simplify the definition of "undertaking" by removing reference to "adverse effect" and "environmental effect."

Recommendation 13

Update the "List of Undertakings," *Environmental Assessment Regulations*, Schedule A.

Recommendation 14

Consider all highway projects as Class I undertakings, transferable to Class II at the discretion of the Minister.

Recommendation 15

Develop a mechanism to assess government policies.

Recommendation 16

Establish Environmental Assessment Panels that are convened as required.

Part V • Approvals and Certificates

Recommendation 17

Clearly articulate the requirement for appropriate public consultation prior to the granting or renewal of an approval.

Recommendation 18

Simplify the application process for approvals.

Recommendation 19

Require all "designated" sectors to have in place an environmental management system (EMS) within five years.

Recommendation 20

Design and implement procedures to identify industry sectors that are engaged in activities currently requiring minimal regulation and require those industries to develop environmental management systems.

Part VI • Release of Substances

Recommendation 21

Modify Section 67 to clarify the interpretation of when a release of a substance is considered to have an "adverse environmental effect" and provide approved guidance.

Recommendation 22

Add a definition for "person responsible for a release."

Recommendation 23

Expand the duty to report the release of a substance to include any person who is aware of the release and has reason to believe that the release has caused, is causing, or may cause an adverse environmental effect.

Recommendation 24

Develop a certification program for home heating oil tanks.

Part VIII • Contaminated Sites

Recommendation 25

Develop and implement a comprehensive Contaminated Sites Strategy.

Recommendation 26

Redefine who is responsible for a contaminated site.

Recommendation 27

Establish a time-bound process for the remediation of contaminated sites.

Recommendation 28

Include "Duty to report a contaminated site" in Part VIII of the *Environment Act*.

Recommendation 29

Clarify the liability of lenders, trustees, administrators, and receivers involved in contaminated sites.

Part IX • Waste-Resource Management

Recommendation 30

Update the province's waste-diversion goal and include specific waste management objectives that emphasize pollution prevention and stewardship.

Recommendation 31

Modify the *Solid Waste-Resource Management Regulations* to require broad representation on the Resource Recovery Fund Board and make the selection process for board members open and transparent.

Recommendation 32

Develop and communicate specific criteria by which the Resource Recovery Fund Board would consider funding specific programs within the Department of the Environment.

Recommendation 33

Broaden the Deposit-Refund Program and reassess the distribution of the deposit.

Recommendation 34

Design and implement a levy program to apply to disposable beverage containers.

Recommendation 35

Develop a Product Stewardship Strategy that includes all products within an equitable product stewardship regime.

Recommendation 36

Require adequate training for composting facility operators and include a requirement to consult with nearby residents and property owners.

Recommendation 37

Develop and implement, in conjunction with community interests, a strategy to curb littering and the unauthorized dumping of waste.

Part X • Water-Resource Management

Recommendation 38

Insert specific water-resource management objectives at the beginning of Part X.

Recommendation 39

Modify Section 105 (2) to require the time-bound implementation of the Water-Resource Management Strategy.

Recommendation 40

Review and revise the water approval fee program to more accurately reflect the value of water.

Recommendation 41

Introduce a recertification process for septic systems, on a 10-year cycle.

Part XI • Air-Quality Management

Recommendation 42

Strengthen and clarify the Minister's authority regarding air-quality management in Nova Scotia.

Recommendation 43

Develop a time-bound provincial Air Pollution Prevention Strategy.

Part XVII • Environmental Industries, Innovations and Technologies

Recommendation 44

Link the mandate of the Environmental Industries and Technologies Division with the implementation of the *Environment Act*.

Part XX • Miscellaneous

Recommendation 45

Modify Section 175 to require that all approvals, permits, licences, etc., granted before the *Environment Act* came into effect fall under the Act and must be renewed in accordance with the Act (i.e., within 10 years).

Other • Enforcement

Recommendation 46

Prepare and distribute an enforcement/compliance policy and guidance document for Department staff and the public.

Detailed Recommendations

Introduction

Purpose (S. 2)

The Purpose section of the Nova Scotia *Environment Act* is an important component of the legislation, as it sets the tone and provides a philosophical framework for the Act. When interpreting the *Environment Act* and associated regulations, one does so in the context of this Purpose section.

The Purpose is forward thinking and holistic in its approach. It embraces the principles of sustainable development, including the principles of ecological value, precaution, stewardship, polluter pay, and pollution prevention.

The Advisory Committee recognizes the value of the Purpose section, but finds the current section to be cumbersome and lacking in focus. In an effort to establish a more concise Purpose section, which clearly identifies the key purposes of the Act, the committee recommends that the emphasis of the section be placed on eight key principles (see Recommendation 1). In order to help streamline the Purpose, it is recommended that all terms introduced here be defined in Section 3, Interpretation. The committee also recommends incorporating, where appropriate, a number of the existing Purpose clauses into Section 8, Duties of the Minister (refer to Recommendation 5).

Definitions (S. 3)

The Advisory Committee received a wide range of comments on a number of key definitions in the *Environment Act*. Appendix 3 contains a list of the committee's recommended additions/modifications/deletions to the definitions found in Section 3 of the Act. These changes are discussed in the corresponding sections of this report, along with a rationale for the direction that the committee is recommending that the Department take in this regard.

Recommendation 1

Streamline and focus the Purpose section.

Proposed Amendment
Purpose

2 Whereas environmental protection and sustainable development are essential to the integrity of ecosystems, human health, and the socio-economic well-being of society, the purpose of this Act is to support and promote the protection, enhancement, and prudent use of the environment.

In implementing this Act, this purpose shall be applied in accordance with the principles of:

(a) ecological value,
(b) precautionary approach,
(c) pollution prevention,
(d) shared responsibility,
(e) stewardship,
(f) polluter pay,
(g) fairness,
(h) public participation.

Note: Each of these principles should be defined in Section 3, Interpretation.

Adverse Effect (S. 3(c))

The definition and use of the term "adverse effect" was one of the most controversial issues that the Advisory Committee addressed during the review process. In its *Public Discussion Paper*, the Nova Scotia Department of the Environment identified "adverse effect" as problematic. This term helps to define when and where the Department has the authority to act to protect the environment. The current definition has a very broad application and, from the Department's perspective, it "has drawn departmental staff away from their core duties to mediate disagreements which are not traditionally considered to be within the mandate of the Department." (p. 5, *Public Discussion Paper*).

Current Definition

3 (c) "adverse effect" means an effect that impairs or damages the environment, including an adverse effect respecting the health of humans or the reasonable enjoyment of life or property. (1994–95, c.1, S. 3(c))

The Advisory Committee received considerable and varying public response to the Department's proposed direction to either eliminate the phrase "reasonable enjoyment of life or property" or to provide greater clarity in terms of the meaning of this clause (refer to Appendix 1). Most people, when questioned specifically about this, supported the approach of providing greater clarity in the interpretation of what would be considered an adverse effect under the Act, providing the basis for the Department to differentiate priorities, while not weakening its ability to respond.

The primary concern expressed to the committee was to ensure that human health and the environment are protected.

Upon careful consideration of the public input provided and reflection on the practical application of the term "adverse effect," the committee recommends an approach that more clearly links the definition to the purposes of the *Environment Act*.

The terms "adverse effect" (S. 3 (c)) and "environmental effect" (S. 3 (v)) are closely linked. The committee recommends refining the focus of the term "adverse effect" by replacing it with the term "adverse environmental effect" (see Recommendation 2).

The committee believes that this will help to focus the efforts of the Department on legitimate *environmental* complaints (which may, in some circumstances, include the effects of noise and/or odour) and avoid other, less pertinent complaints such as "barking dogs."

The new term "adverse environmental effect" emphasizes protection of the environment and human health, two of the most important considerations communicated to the committee during the public consultation.

The Advisory Committee also believes that it is imperative that the Department develop a policy and guidance document and conduct training to assist staff with the consistent application of the definition of "adverse environmental effect" province-wide. This could be incorporated into a broader Enforcement/Compliance guidance initiative. (Refer to Recommendation 46.)

Recommendation 2

Modify key definitions: "adverse environmental effect" and "environmental effect."

Proposed Amendments

3(c) "adverse environmental effect" *means an environmental effect that impairs or damages the environment, including those aspects of human health that are or can be affected by contaminants or changes in the environment.*

3(v) "environmental effect" *means any change, whether positive or negative, to the environment, and any change caused by the environment.*

Note: Update all references to these terms in the Act.

New Objectives Sections

The current *Environment Act* does not contain an Objectives section or sections, although objectives are dispersed sporadically throughout the Act. The Advisory Committee recommends highlighting specific objectives at the beginning of various parts of the Act. This would give the Department a clear direction, and also provide a basis from which to gauge progress (see Recommendation 3).

The committee recommends, in so far as practical, that these objectives be specific, measurable, and time-bound. The committee believes that the inclusion of such a specific goal (i.e., 50 per cent solid-waste diversion for the year 2000 in Part IX, Waste-Resource Management in the original *Environment Act*) was a major reason for the substantial progress achieved, particularly when compared to limited progress on other analogous parts.

Recommendation 3

Where applicable, begin each part of the Act with specific objectives that, where practical, are time-bound and measurable.

Committee Comments

See recommendations in Parts IX, X and XI for the committee's proposed objectives.

Further objectives should be developed for Parts IV–VIII.

Significant "Shalls"

The Advisory Committee has reviewed the use of the verb "shall" in the *Environment Act*, with particular focus on the tasks that the Minister "shall" do. As previously mentioned, the committee has observed that considerable progress has been made on the Minister's "shall" tasks that are linked to specific, measurable and time-bound deliverables (Sections 92 and 93(1); see insert below).

Time-bound, specific, measurable "shall" clauses

Solid-waste-resource strategy

92 The Minister shall establish a solid-waste-resource management strategy for the Province. (1994–95, c.1, S. 92)

Waste diversion goal

93(1) There is hereby adopted the Canadian target of a fifty per cent solid-waste diversion goal for the year 2000. (1994–95, c.1, S. 93 (1))

This is in contrast to other significant "shall" clauses such as Sections 77, 81(a), and 114, in which much less progress has been made (see insert below).

Examples of "shall" clauses in the Environment Act with little or no progress to date

Research

77 The Minister shall undertake research and adopt policies, programs and strategies to find alternatives to the use of dangerous goods and pesticides and to reduce the production of waste dangerous goods and pesticides. (1994–95, c.1, S.77)

Powers and Duties of Minister

81 The Minister (a) shall develop, co-ordinate and enforce policies, planning and programs respecting integrated pest management and alternatives to the use of pesticides; (1994–95, c.1, S. 81)

Programs to promote reporting

114 The Minister shall establish programs to promote the reporting of

(a) acts or omissions that cause adverse effects; and

(b) acts or omissions that may constitute offenses under this Act.

(1994–95, c.1, S. 114)

The Advisory Committee recommends that all significant "shall" clauses in the *Environment Act* be linked to specific, time-bound deliverables. Existing "shall" clauses that are not being actively pursued by the Department should be converted to "may" clauses. A requirement to report on the progress of the "shall" clauses should also be incorporated into the process, perhaps through the state of the environment reporting mechanism (refer to Recommendation 4). The committee believes that this will help to focus the Department's efforts on priority areas.

Recommendation 4

Link significant "Minister shall" clauses to specific, time-bound deliverables.

Committee Comments

Review and prioritize "Minister shall" clauses. Include in the Environment Act, specific time-bound deliverables to priority "shall" tasks. Provide a mechanism to report publicly on progress made to accomplish the priority "shall" tasks.

Administration

Education and Research

Duties of the Minister (S. 8(2))

The Duties of the Minister (S .8(2)) in the supervision and management of the *Environment Act* include a wide range of duties, ranging from high-level policy directions (e.g., promoting sustainable development) to mundane, but essential tasks (e.g., prescribing forms). Very specific duties are also included in Section 8, without any apparent rationale for inclusion here (e.g., implementing policies and plans for specific programs such as the management of waste, and environmental industries). The Advisory Committee has also noted considerable overlap between some of the Minister's duties and the current Purpose clauses. In keeping with a more concise and streamlined approach, the Advisory Committee suggests modifying Section 8 to better reflect a hierarchy of Ministerial duties (refer to Recommendation 5). The committee recommends editing and sorting these duties into two groups: (1) principal duties and (2) administrative duties. The committee recommends renaming the former as "Principal Duties of the Minister" and moving it to Part I, after the Purpose section. The latter should remain as Section 8, but be renamed as "Administrative Duties of the Minister."

Recommendation 5

Modify and realign the "Duties of the Minister" (Section 8 (2)).

Committee Comments

Create a new section in Part I named "Principal Duties of the Minister" and include here the higher level duties of the Minister derived from Sections 2(b)(vi); 2(b)(vii); 2(g) and Sections 8(2)(a); 8(2)(b); 8(2)(c); 8(2)(e); 8(2)(g); and 8(2)(h).

Rename Section 8, "Administrative Duties of the Minister" and include here Sections 8 (2)(i); 8(2)(k); 8(2)(l).

Delete duties that are too specific or redundant (Sections 8(2)(d), 8(2)(f), 8(2)(j)).

Proposed Amendments

KEEP IN PART II

Supervision of Act

8 (1) *The Minister is responsible for the general supervision and management of this Act.*

Administrative Duties of the Minister

(2) *The Minister, for the purposes of the administration and enforcement of this Act shall*

(a) establish criteria to be applied by an administrator or a person to whom responsibility is delegated pursuant to this Act in making any decision under this Act;

(b) establish fees for the provision, registration or filing of any information, documents, returns and reports, any application for, processing and issuance of an approval or a certificate, any inspection or investigation and any services or material provided in the course of the administration of this Act;

(c) prescribe forms for the purpose of this Act.

MOVE TO PART I

Principal Duties of the Minister

( ) *The Minister, for the purposes of the administration and enforcement of this Act, and after engaging in such public review as the Minister considers appropriate to satisfy the purpose of the Act, shall*

(a) promote sustainable development, recognizing that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends on a strong economy;

(b) integrate sustainable development principles in public policy making in the Province;

(c) promote integrated environmental-economic accounting to ensure that natural resources and environmental quality are fully valued in public policy making in the Province;

(d) conduct economic analyses to determine the costs and benefits of proposed alterations of the environment and assess methods of offsetting the environmental costs associated with those alterations;

(e) establish and administer policies, plans, programs, standards, guidelines, objectives, codes of practice, directives and approval processes necessary to meet the purposes of this Act and the regulations;

(f) build partnerships, work co-operatively, and co-ordinate activities with other departments, Government agencies, municipalities, other governments and other persons;

(g) regulate or otherwise ensure that activities and actions with potential adverse environmental effects are controlled, avoided or minimized.

Public Participation

There was a strong call from the public for more meaningful and varied approaches to public participation with regard to environmental decision making (refer to Appendix 1). The Advisory Committee agrees that public engagement is fundamental to effective environmental decision making and recommends that any effort in this regard include a full spectrum of public involvement mechanisms, such as

- access to information
- exchange of information
- education programs and initiatives
- response and follow-up to public inquiries and complaints
- public consultation
- opportunities to influence a decision prior to its being made by government

Based on public input, the Advisory Committee recommends that the *Environment Act* strengthen the government's commitment to public participation in addressing environmental matters in Nova Scotia. The Act, in its current form, is lacking a clear definition and scope for the phrase *public participation*. Currently, references to opportunities and mechanisms for involving the public are found in Parts I, II, III, and IV, as well as scattered elsewhere in the Act.

In order to emphasize the importance of public participation and to clarify the scope and mechanisms used by the Department, the Advisory Committee recommends consolidating all of these references into one part of the Act, entitled Public Participation. This could either be a new part, or a renaming of Part III (currently Environmental Education and Research).

The committee also recommends enhancing the Public Participation part by adding specific objectives and a clear definition of the meaning and

scope of the phrase *public participation* (see Recommendation 6). This definition should include specific reference to the public's ability to "influence" decision making, which the Advisory Committee believes differentiates meaningful and legitimate public participation from cosmetic interaction. Duties and activities that require a public participation component should be mentioned here (i.e., environmental assessment, approvals, etc.), but described in detail in the appropriate parts of the Act/regulations.

Recommendation 6

Consolidate and enhance public participation opportunities.

Committee Comments

Consolidate into one part:

Part I, Section 8(2)
Public review

Part II, Section 9
Advisory committees and experts

Part II, Section 10
Environmental Registry

Part II, Section 11
Round Table on Environment and Economy

Part II, Section 16
Reporting on state of the environment

Part II, Section 26
Public review of regulations

Part III, Section 27
Education

Part IV
Make reference to the importance of public participation in the environmental assessment process, but leave specific references in Part IV.

Part XII, Section 115(1)
Application for investigation

Part XX, Section 174
Review of Act and regulations

Proposed Amendments

Add definition of "public participation" in Section 3:

3(_) "public participation" *means the meaningful and accessible opportunity for the public to influence government decision making pertaining to the substance of the Environment Act or other environmental matters.*

Add a provision at the beginning of the Public Participation part:

- *The Minister shall implement effective mechanisms to enable public participation in decision making throughout government where the consequences of those decisions may result in substantial environmental impact.*

Insert an objective for the Public Participation part (taken from current (S. 2(h)):

Objective

- *To provide access to information and facilitate effective public participation in the formulation of decisions affecting the environment, including opportunities to participate in the review of legislation and policies and the provision of access to information affecting the environment.*

Round Table on Environment and Economy (S. 11–13)

The Round Table

The Nova Scotia Round Table on Environment and Economy was formed in 1988. Membership included the Premier and Ministers from the resource-based provincial departments, as well as a broad range of stakeholders from across the province. The Premier and the Minister of the Environment co-chaired the committee, and a non-government member served as vice-chair. They were tasked with the broad mandate of promoting and encouraging sustainable development in Nova Scotia.

The Department of the Environment has indicated in its *Public Discussion Paper* that it is "reviewing formal structures such as the Nova Scotia Round Table on Environment and Economy ..." (p. 10). Comments received from the public, for the most part, support improving or replacing current models of public consultation, to ensure the most effective use of government resources (refer to Appendix 1). Several submissions gave strong support for the work of the Round Table in moving forward the agenda of sustainable development in the province. The Round Table has been inactive for more than two years, due, for the most part to difficulty in scheduling meetings that could be attended by the Premier and Ministers. In addition, the funding that supported the Round Table was eliminated in a past provincial budget.

The Advisory Committee believes that the Round Table on Environment and Economy has been a valuable asset to government. Members of the Round Table identified and discussed key issues from a broad perspective and provided informed input into policy making regarding sustainable development in Nova Scotia.

By engaging senior government officials directly, it was able to advance government's appreciation of, and attention to, sustainable development opportunities.

Although this Advisory Committee recognizes the Department's interest in focusing public engagement processes, it nonetheless believes that there are unique benefits to an ongoing Round Table process, particularly as it applies to longer-term or strategic policy initiatives. Since Round Table members are selected on the basis of broad interest and expertise, the membership is less likely to be polarized around any specific topic. Essential components to the ongoing success of the Round Table are, first and foremost, a strong government commitment to participate and, secondly, the modest infrastructure and resources necessary to deliver its mandate. In particular, the committee believes that the Round Table should include representatives of Cabinet members holding resource-based portfolios and those with portfolios that have major impacts on sustainable development. The committee recognizes that there is an immediate opportunity for the government to rely upon the expertise of the Round Table in the development and implementation planning of their proposed "Green Plan" (Recommendation 7).

Recommendation 7

Re-establish the Round Table on Environment and Economy, with a renewed government commitment.

Committee Comments

Immediately re-establish the Nova Scotia Round Table on Environment and Economy and assign the initial task of the design and implementation planning of the proposed government "Green Plan."

At the conclusion of this task, engage the full membership of the Round Table in an exercise to objectively evaluate the value and potential purpose of the Round Table to determine its future role.

Provide the infrastructure and modest resources necessary to fulfil this new mandate.

Re-examine and adjust the membership requirements to ensure full participation by Cabinet members with resource-based portfolios and those portfolios with major impacts on sustainable development decisions.

Reporting on the State of the Environment (S. 16)

> "The Minister shall report periodically to the people of the Province on the state of the environment in the Province."
> 1994–95, c. 1, S. 16

The Advisory Committee recognizes the importance of informing Nova Scotians about the state of their environment, both to increase citizen knowledge and to monitor progress toward environmental objectives. The *Environment Act* requires that the Minister of the Environment report to the public periodically on this topic (Section 16, Reporting on state of the environment; see insert above). This clause, however, is very general and does not prescribe the time frame or the scope of this reporting. As a consequence, only one partial State of the Environment Report has been produced since 1995. Funding was discontinued in the government's year 2000 budget for the report that was partially complete.

In addition, the Advisory Committee was apprised of important work underway in Nova Scotia to develop a series of genuine progress indicators [3], which are intended to align criteria for measuring progress with our society's core values.

The Advisory Committee recommends clarification of Section 16 by requiring the Minister to report to the public on a biannual basis, based on tightly focused objectives (refer to Recommendation 8). It is recommended that this report target specific progress achieved with regard to the objectives contained at the beginning of various parts of the Act and provide information on any significant environmental events that have occurred in the province for the previous two-year period (i.e., THMs and drinking water; brown spruce longhorn beetle invasion). (Refer to Recommendation 3.)
In addition, the committee recommends an accelerated effort by government and its partners to develop a comprehensive set of genuine progress indicators, such that they can be referenced in setting and monitoring future objectives.

3. For further information on genuine progress indicators contact GPI Atlantic.

Recommendation 8

Specify scope and time frame for the Minister to report to the public regarding the state of the province's environment (modify Section 16):

Proposed Amendments
Reporting of state of the environment

16 *The Minister shall report to the people of the Province biannually on the state of the environment in the Province. This report shall contain an update of the following:*

(1) progress achieved with respect to the specific objectives found within this Act;

(2) information on any significant environmental events and occurrences in the province during the previous two-year period; and

(3) progress achieved on the development and implementation of genuine progress indicators for use in provincial accounting.

Committee Comments

Accelerate efforts to develop a set of genuine progress indicators and reference them when monitoring and reporting on objectives.

Nova Scotia Environmental Trust (S. 28)

The Environmental Trust Fund, established under Section 28 of the *Environment Act*, has been inactive for a number of years because it lacks the ongoing source of revenue necessary to sustain a funding program. Many people expressed the view that money collected through environmental fines and levies should be used to fund community-based environmental projects and ecosystem research initiatives. Others cautioned that such funds should not be used at the discretion of departmental administrators, especially to fund departmental programs (refer to Appendix 1).

The Advisory Committee recommends that the Environmental Trust Fund be revived and rejuvenated by channelling to it all funds derived from penalties and fines resulting from offences under the *Environment Act*. In addition, the committee suggests that all stewardship initiatives contribute modestly to funding these broader environmental activities that otherwise would not have adequate access to resources and without which the overall climate for stewardship would not be advanced. For example, we suggest that 2 per cent of the gross margin[4] of the Resource Recovery Fund Board (RRFB) go directly into the Environmental Trust Fund. The allocation of funds from the trust should be determined by a non-departmental review committee. Furthermore, the committee recommends that the funds be used to support three main areas: (1) environmental enhancement, (2) education, and (3) research (Recommendation 9).

Recommendation 9

Rejuvenate the Environmental Trust Fund and secure ongoing sources of revenue.

Committee Comments

Activate the Environmental Trust Fund. Channel sources of revenue directly to it from:

- *environmental fines and penalties*
- *other stewardship initiatives (i.e., 2 per cent of the gross revenue of the Resource Recovery Fund Board)*

The allocation of trust funds is administered by a non-departmental review committee. The Environmental Trust is used to support non-departmental:

1. *environmental enhancement*
2. *education*
3. *research*

Review of the Act (S. 174)

The *Environment Act* (1994-95, c.1) represents the amalgamation of 16 provincial statutes and 44 regulations. The Act was very innovative at the time and introduced a number of approaches to the use and protection of the environment that were virtually untested in Nova Scotia.

Built into the legislation is a mandatory "comprehensive review of this Act and regulations within five years of its coming into force" as outlined in Section 174. This section gives the mandate for the current Advisory Committee and this review process.

The Advisory Committee has heard from the public that a mandatory review is valuable and warranted. The committee recommends that a mandatory review be conducted on a seven-year cycle, starting from January 2000 (refer to Recommendation 10). This will ensure that the legislation is in place for a reasonable period of time between reviews and provides a sufficient window of time (i.e., approximately two years) to

4. Gross margin = revenues – cost of sales (excepting administrative expenses)

conduct the review and make any required amendments to the Act and regulations. Furthermore, the committee recommends that the following requirements be articulated in the Act: (1) the committee's report be made available to the public and (2) the Minister respond publicly to the committee's report within six months of its receipt. These amendments are in keeping with the intent of the Department for the current review and will therefore serve to ensure that the public is aware of the process from the outset.

Recommendation 10

Require mandatory reviews of the Environment Act and regulations every seven years.

Committee Comments

Continue the implementation of Section 26 of the Environment Act, which requires public review of any new regulations or any substantive amendment to the regulations.

Proposed Amendments

174 Review of the Act and regulations

(1) The Minister shall appoint an advisory committee to initiate a comprehensive review of this Act and the regulations within five years of its coming into force (January 1, 1995), and within every seven years thereafter.

(2) This review shall include public participation, as appropriate.

(3) The committee shall submit to the Minister, within six months of initiating the review, a report that includes amendments, if any, recommended by the committee.

(4) The Minister shall make the committee's report public.

(5) The Minister shall respond to the committee's report within six months from the date of receipt of this report and shall make this response available to the public

Environmental Assessment Process

Environmental Assessment Process

The environmental assessment process in Nova Scotia is 25 years old. In 1994–95, when the *Environment Act* was being developed, it was recognized by government and the public that the environmental assessment process required significant re-evaluation. The Nova Scotia Department of the Environment also acknowledged in their *Public Discussion Paper* that Nova Scotia's "current model for environmental assessment could benefit from refinement." (p.7, *Public Discussion Paper*). This is certainly reflected in the number and depth of comments received from the public on this topic (refer to Appendix 1).

All of the public comments and suggestions submitted to the committee with respect to the environmental assessment process have been forwarded to the Environmental Assessment Section of the Department for consideration in the upcoming review of the *Environmental Assessment Regulations*.

Based on the issues raised by the public, and after careful consideration of the existing environmental assessment process, the Advisory Committee recommends that the environmental assessment process undergo comprehensive review (refer to Recommendation 11). Because of the complexity and detailed nature of the process and options available, the committee has opted to suggest only a few key principles to be incorporated into a revised assessment process (see Recommendation 11). These include further emphasis on public participation, more extensive guidance documents, guidance for more clear evaluation of cumulative effects, the implementation of more practical time lines, and explicit attention to the unique involvement of First Nations in the assessment process. In addition, the Advisory Committee recommends four specific changes within the environmental assessment section of the Act and the *Environmental Assessment Regulations*. The committee's recommendations relate to the following areas:

- definition of undertaking
- list of undertakings
- policy assessments
- the Environmental Assessment Board

Recommendation 11

Conduct a comprehensive review of the environmental assessment process.

Committee Comments

The revised environmental assessment process should include the following directions:

- *integrate thorough and clear opportunities for meaningful public participation*
- *develop more extensive guidance for both proponents and the public*
- *incorporate guidance for evaluation of cumulative effects*
- *establish effective and practical time lines*
- *integrate First Nations involvement*

Definition of Undertaking

Current definition

3 (az) **"undertaking"** means an enterprise, activity, project, structure, work or proposal, and may include, in the opinion of the Minister, a policy, plan or program that has an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;
1994–95, c.1, S. 3(az)

The Advisory Committee has given considerable thought to the definition of the term "undertaking," in view of the public input received. As currently defined (see insert above), in order for any venture to be considered an undertaking by this definition, it must have an "adverse effect" or an "environmental effect." It is the committee's opinion that, in many cases, an undertaking such as an activity would have to go through a pre-screening process before it could be determined that it was, in fact, having an environmental effect or an adverse effect.

It is for this reason that the Advisory Committee recommends a more straightforward approach that defines undertaking independent of "adverse effect" or "environmental effect" (Recommendation 12). The committee recognizes that amending the definition of undertaking will have other implications for the environmental assessment provisions in the Act and regulations. Therefore the committee suggests that the proposed definition be considered only in the context of a broader review of the environmental assessment process.

Recommendation 12

Simplify the definition of "undertaking" by removing reference to "adverse effect" and "environmental effect."

Committee Comments

Consider the proposed definition only in the context of a broader review of the environmental assessment process.

Proposed Amendment

3 (az) ***"undertaking"*** *means an enterprise, activity, project, structure, work or proposal; and may include, in the opinion of the Minister, a policy, plan or program; and may also include, in the opinion of the Minister, a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;*

List of Undertakings

The List of Undertakings provides a template for identifying the types of undertakings that would be subjected to the environmental assessment process. The current list (*Environmental Assessment Regulations*, Schedule A) is, in the opinion of the Advisory Committee, out of date and in need of substantial updating. The Advisory Committee received considerable input on this list and recommends that this input be considered carefully when the Department conducts the comprehensive review of the environmental assessment process (i.e., Recommendation 11).

The Advisory Committee has identified several gaps in the List of Undertakings and offers them here for consideration in the review process:

- golf courses
- subdivisions (within a defined context)
- highway twinning projects

The committee also acknowledges that there are other activities that should be added to the list, and again stresses the need for a complete update (Recommendation 13).

Recommendation 13

Update the List of Undertakings, Environmental Assessment Regulations, Schedule A.

Committee Comments

Review submissions received to date and consult with the public regarding revisions to the list.

Consider the addition of the following:

- *golf courses*
- *subdivisions*
- *highway twinning projects*

The Advisory Committee recognizes the dilemma with respect to requiring Class II assessments on four-lane highway projects that are more than 10 km in length. In the committee's opinion, the length and number of lanes is an insufficient basis to determine the need for assessment, and therefore recommends that all highway projects be considered Class I undertakings. This means that any highway project, regardless of length or number of lanes, can, at the discretion of the Minister, be elevated to Class II, if the preliminary screening process warrants it (Recommendation 14).

This would allow for a full environmental assessment (including public hearings) of, for example, a project to construct a two-lane, 6-km long highway that intersects an environmentally sensitive area. On the other hand, a relatively long (more than 15 km) highway project with fewer environmental aspects could remain in the Class I category.

Recommendation 14

Consider all highway projects as Class I undertakings, transferable to Class II at the discretion of the Minister.

Committee Comments

Base this decision on criteria described in the regulations.

Policy Assessments

The Purpose section of the *Environment Act* (S.2(b)(vii)), calls for the "comprehensive integration of sustainable development principles in public policy making in the province." Several submissions to the committee also refer to the need for "policy assessments to ensure that there is an ongoing public debate on government policies and how they can be adjusted to help Nova Scotia move toward a prosperous sustainable society" (taken from submission #29).

The Act and regulations currently enable the discretionary assessment of policies, as policies are included in the definition of "undertakings." What appears to be lacking is a defined mechanism to trigger an assessment and a process of implementation.

The committee recommends that a mechanism be developed to conduct assessments of government policies that impact Nova Scotia's major resource-based industries, such as forestry, farming, aquaculture, and energy development, as well as policies with other province-wide environmental implications, such as transportation (Recommendation 15). This initiative could be applied to other major policy initiatives with environmental implications as they arise within government's agenda. The focus of these assessments would be the overall and cumulative environmental effects arising from the implementation of the policy framework. The Nova Scotia Round Table on Environment and Economy could be utilized as a vehicle to facilitate these policy assessments.

Recommendation 15

Develop a mechanism to assess government policies.

Committee Comments

Conduct assessments of policies that impact Nova Scotia's major resource-based industries (i.e., forestry, farming, aquaculture, energy) and policies with other province-wide environmental implications (i.e., transportation).

Utilize the Nova Scotia Round Table on Environment and Economy as a vehicle to facilitate these policy assessments.

Environmental Assessment Board

The Nova Scotia Department of the Environment has expressed an interest in replacing the existing permanent Environmental Assessment Board with a "more efficient and cost effective ... temporary panel, drawn from a roster of 'qualified persons'" (p. 7, *Public Discussion Paper*).

The committee has heard arguments on both sides of this issue (see Appendix 1). Those in favour of a "temporary panel" suggest that cost-effectiveness is the main reason to go in this direction. In addition, some feel that it would be advantageous to design the make-up of a panel, based on the expertise required for a specific review. Those hesitant to support a "temporary panel" cite lack of public accountability, loss of consistency (i.e., history of dealings), and the potential for conflict of interest in the appointment of "qualified persons."

The Advisory Committee recommends that the permanent Environmental Assessment Board be replaced by Environmental Assessment Panels appointed and convened as required, to conduct environmental assessments (Recommendation 16). The committee does not have a position on the establishment of a preselected roster of "qualified persons," but does recommend that a set of criteria be developed that outlines the qualifications required of persons eligible to sit on these panels.

Recommendation 16

Establish Environmental Assessment Panels that are convened as required.

Committee Comments

Develop a set of criteria for "qualified persons" and screen potential candidates against these criteria.

Any criteria developed should be transparent.

Approvals and Certificates

At the present time, the Nova Scotia Department of the Environment issues approvals for "designated activities" (refer to *Activities Designation Regulations*). These are initiatives that are known to have an adverse effect on the environment. The approval process is intended to control negative impacts on the environment. To that end, the Department requires the proponent of a designated activity to obtain an approval and to abide by the terms and conditions listed in that approval.

Approval Process and Public Participation

There was a call from the public for greater public participation in the establishment of the terms and conditions of an approval. This can also be said for renewals of existing approvals as well as amendments to approvals (i.e., renewal of hydro dam approvals). In accordance with the *Approvals Procedure Regulations*, Section 5(1)(u), the proponent must include with the approval application "a description of any public consultation undertaken or proposed by the applicant." This wording does not specifically require public consultation, but simply requires a description of any public consultation undertaken.

The Advisory Committee recommends that the requirement for appropriate public consultation prior to the granting or renewal of approvals be clearly articulated in the *Approvals Procedure Regulations* (refer to Recommendation 17). This recommendation is in keeping with the Department's desire to "more effectively engage the public and broad-based community groups in key discussions and debates." (*Public Discussion Paper*, p.10)

Recommendation 17

Clearly articulate the requirement for appropriate public consultation prior to the granting or renewal of an approval.

Proposed Amendment
Approvals Procedure Regulations

5(1) *Unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:*

(u) *a description of the applicant's public participation program, which shall be proportionate to the scale of the activity and its potential impact on the environment.*

Committee Comments

Prepare a guidance document for staff and proponents on public consultation methods and applications.

The committee also recommends that the proposed level and degree to which this consultation is conducted is the responsibility of the proponent, with review by the Department (see Recommendation 18). If, in the opinion of the Minister, the public consultation conducted or planned is inadequate, then the approval can be withheld. This approach would also benefit from a guidance document for staff and proponents to assist with the assessment of the approach and degree of public input required for each activity. It also supports the movement toward "class" approvals, in which similar and/or repetitive activities are subjected to a more streamlined approach (i.e., installation of culverts). To ensure consistency, the committee emphasizes that the terminology remain consistent, and particularly that the term "approval" be retained for all designated activities. The committee is of the opinion that a change in terminology, after five years of use, would create undue confusion for the public and would result in an inefficient use of resources.

Recommendation 18

Simplify the application process for approvals.

Committee Comments

Create a two-tiered approval process

1. *Initial application, with key information; the Department could issue the approval at this stage or advance it to the second level, if the potential for environmental impact warrants it.*
2. *Level two requires more in-depth information, including, if appropriate, public consultation.*

Clearly define which parts of Section 5 (1) of the Approvals Procedure Regulations are required in the application for each of the two tiers.

In reviewing applications for approvals, the Department will consider the adequacy of public participation and may require further efforts.

Consider streamlining the approval process for repetitive groups or classes of activities, but retain the term approval for all designated activities.

Promoting Compliance

The Nova Scotia Department of the Environment issues more than 12,000 approvals per year in the province, ranging from the "construction or maintenance of a wharf" to the "construction, operation or reclamation of a pulp and paper manufacturing plant in which pulp and paper products are manufactured" (refer to the *Activities Designation Regulations* for the complete list). Despite the wide range covered, there remain many activities that potentially could cause an adverse environmental effect but do not require an approval under the *Environment Act*. Examples include many of the activities associated with dry-cleaning operations, intensive agriculture, and automotive repair shops.

The Department has expressed a strong interest in exploring "more varied tools to encourage voluntary compliance such as codes of practice ... environmental management systems and auditing programs to enable effective industry self-regulation." (*Public Discussion Paper*, p. 9) This approach would save time and departmental resources in managing the regulated industries and would also reach many of the non-regulated industries. This is of current relevance in light of diminishing departmental resources and capabilities.

The Advisory Committee received considerable input and heard arguments for and against this approach (refer to Appendix 1). The desire for a "level playing field" was raised on several occasions by those participating in environmental stewardship initiatives, who felt that their competitors were not required to do the same and, therefore, that responsible stewardship could negatively affect them.

The Advisory Committee recommends that the Department move towards a system requiring all "designated" industry sectors to have in place an environmental management system (EMS) that addresses all current regulatory requirements and existing approval conditions (Recommendation 19). The environmental management system would require implementation over a five-year period, and all sectors would be encouraged to exceed the minimum requirements necessary to meet the Act and regulations. Systems designed around principles such as stewardship and pollution prevention should be rewarded. The EMS would require periodic third-party audit and review by the Department. The process would also require mechanisms to identify opportunities for continual improvement. Improvements could be assessed periodically, or at the time of renewal of the approval (i.e., every 10 years). The committee agrees with the Department that combining self-directed action with transparent accountability mechanisms could result in a successful alternative approach to command and control regulation.

Recommendation 19

Require all "designated" sectors to have in place an environmental management system (EMS) within five years.

Committee Comments

This EMS must:

- *address all regulatory requirements of the existing approval, with rewards for implementing environmental principles such as stewardship and pollution prevention initiatives*
- *undergo third-party audits on a periodic basis, with the reports retained for review by the Department*
- *include planning for continual improvement, upon which the renewal will be assessed*

The Advisory Committee further recommends that the Department develop and implement procedures to identify sectors that are currently not regulated and to require them to start the process of developing EMSs, based on codes of practice and industry standards (Recommendation 20). Specific time lines for implementation should be established for each sector. It is the committee's understanding that a similar initiative is currently being conducted by the Federation of Agriculture for farming operations. This initiative should also be time-bound. Such a move toward self-management by industry should help to increase the effectiveness of the Department and minimize the environmental impacts of the participating sectors.

Recommendation 20

Design and implement procedures to identify industry sectors that are engaged in activities currently requiring minimal regulation and require those industries to develop environmental management systems.

Committee Comments

Identify sectors and establish time lines.

Stress pollution prevention and stewardship as primary objectives beyond mere regulatory compliance.

Link EMSs to codes of practice and/or specific environmental performance objectives.

Release of Substances

"Significant" Adverse Effect

Section 67 of the *Environment Act* provides the Minister with broad authority to prosecute any person who releases or permits the release of a substance into the environment where it causes or may cause a significant adverse effect. Since 1995, the year the *Environment Act* came into force, only four charges have been laid under Section 67 of the Act. Based on public input and discussion with departmental staff, the committee is of the opinion that the limited number of charges is, in part, a result of the perceived difficulty of proving that a release of a substance is causing or may cause a "significant" adverse effect. The term "significant" is not defined in the Act (although a definition exists in the *Environmental Assessment Regulations*).

The Advisory Committee does not believe that including the qualifier "significant" enhances the interpretation of adverse effect. Indeed, it is the committee's opinion that uncertainty as to the threshold of significance has been one of the primary inhibitors of enforcement and action by the Department inspectors, Crown prosecutors, and other officials. The committee therefore recommends the elimination of the term "significant" from Section 67 (Recommendation 21). Although it can be argued that, in the absence of the qualifier "significant," the door might be open to action or prosecution for many minor or inconsequential effects, the committee submits that overzealous enforcement is not likely to be a problem and a combination of guidance, training, and precedent will result in reasonable decision making.

Recommendation 21

Modify Section 67 to clarify the interpretation of when a release of a substance is considered to have an "adverse environmental effect" and provide approved guidance.

Committee Comments

Replace the phrase "adverse effect" with "adverse environmental effect" (see Recommendation 2).

Remove "significant" as a qualifier of the phrase "adverse environmental effect" in Section 67.

Provide guidance for the interpretation of this revised clause in a compliance/enforcement policy and guidance document (Refer to Recommendation 46.)

Person Responsible for a Release

Several submissions provided to the committee commented on confusion with regard to the phrase "person responsible for a release" in Sections 69 and 71 of the Act. The confusion exists because the phrase "person responsible" is a defined term in the Act. For clarity, the Advisory Committee recommends that a definition for "person responsible for a release" be added to Section 3 of the Act (Recommendation 22). Providing this definition will eliminate confusion and is consistent with committee recommendations proposed for Part VIII, and the allocation of responsibilities associated with contaminated sites.

Recommendation 22

Add a definition for "person responsible for a release."

Committee Comments

Base the definition of "person responsible for a release" on the principle of polluter pays. For example, the owner of the substance and any person having care, management, or control over the substance should be considered a "person responsible for a release." However, a previous owner, or a manufacturer, or a vendor of the substance should not be considered a "person responsible for a release," unless they had some connection to the substance at the time of the release or in some way contributed to the release itself.

Duty to Report a Release

The duty to report a release in Section 69 of the Act applies only to a "person responsible for the release." The Advisory Committee recommends that the duty be expanded to include any person who is aware of the release and has reason to believe that the release has caused, is causing, or may cause an adverse environmental effect (Recommendation 23).

Recommendation 23

Expand the duty to report the release of a substance to include any person who is aware of the release and has reason to believe that the release has caused, is causing, or may cause an adverse environmental effect.

Oil Tank Program

Oil spills are a growing concern in Nova Scotia. Nearly half of all oil spills reported to the Nova Scotia Department of the Environment each year are from domestic oil tanks. These oil spills, and the resulting environmental, economic, and human health impacts are preventable, with the proper routine maintenance and timely replacement of aging tanks. A multi-stakeholder Domestic Oil Tank Task Force has been established to investigate options for minimizing the risks of home heating oil tanks.

The Advisory Committee recommends that this task force develop a certification program for home heating oil tanks (Recommendation 24). Such a program would ensure that home heating oil tanks are inspected and recertified on a regular basis. This program could also incorporate improved standards for tanks and public education/awareness initiatives to encourage proper tank care and maintenance. Consideration should also be given to assisting hardship and special cases (i.e., low-interest loans, tax incentives).

Recommendation 24

Establish a certification program for home heating oil tanks.

Committee Comments

Such a program should include:

- *improved standards for home heating oil tanks*
- *tank inspections and recertification on a regular basis (to be determined)*
- *education/awareness programs for proper care and maintenance of tanks*
- *assistance for hardship and special cases*

Contaminated Sites

The Nova Scotia Department of the Environment believes that the "effective management of [contaminated] sites is vital to the protection of human and ecosystem health, now, and into the future." (*Public Discussion Paper*, p. 6). At the present time, the options available to manage contaminated sites outlined in Part VIII of the *Environment Act* apply only to sites that have been designated by the Minister of the Environment. Since the Act was adopted in 1995, the Minister has not designated any contaminated sites in Nova Scotia.

The review process drew more public input on the contaminated site issue then most other issues. Comments were, for the most part, detailed and technical in nature. A brief summary is found in Appendix 1. Currently, the Department of the Environment uses guidelines and relies heavily on a voluntary process for managing contaminated sites. In the absence of a functional means of identifying or designating sites, action and progress on contaminated site remediation and management has been sporadic. Recognizing this difficulty, the Department has communicated its intention to develop a comprehensive strategy for the management of contaminated sites, building on the input received from this review process (*Public Discussion Paper*, p. 6).

Contaminated Sites Strategy

The Advisory Committee supports the government's commitment to develop a comprehensive Contaminated Sites Strategy and recommends incorporating a number of key points into the development of this strategy (see Recommendation 25). The committee believes that Part VIII should be expanded and applied to all contaminated sites, not just to those sites that the Minister designates. Furthermore, the term "contaminated site" should be more precisely defined, based on specific scientific criteria. Once a clear definition is developed, the committee recommends that the Department of the Environment compile and maintain a provincial inventory or registry of contaminated sites. A mechanism should be implemented to select sites listed within the inventory for remediation and to prioritize action and management plans.

Recommendation 25

Develop and implement a comprehensive Contaminated Sites Strategy.

Committee Comments

Incorporate the following recommendations:

- *Re-define "contaminated site" based on specific scientific criteria (include definition in Section 3 of the Act).*
- *Broaden Part VIII to include all sites that fall within the revised definition above.*
- *Compile and maintain a contaminated site inventory.*
- *Create a Priority Contaminated Site List, which identifies sites targeted for remedial action.*
- *Designate a site once it is targeted for remedial action (refer to Recommendation 27).*

Person Responsible for a Contaminated Site

The Advisory Committee received input on the broad approach that the *Environment Act* currently uses to determine "person responsible" in the context of contaminated sites. From the outset, prior to 1995, some groups expressed objections to applying the phrase "person responsible" to such a wide range of people. Submissions have been received proposing a broad approach to identify "persons **connected** to a contaminated site," rather than persons responsible for a contaminated site, as a first step. The Minister would then be obliged to identify "persons responsible for a contaminated site" from this broader list, based on well-established criteria. The Advisory Committee agrees with this approach and has drafted proposed amendments based on a reordering of current provisions in the Act to address this issue (see Recommendation 26).

Recommendation 26

Redefine who is responsible for a contaminated site.

Committee Comments

Delete current definition of "person responsible" (S. 3(ak)) and add the definitions proposed below.

Proposed Amendments

"person connected to a contaminated site"

(i) the owner or previous owner of the substance that is over, in, on or under the contaminated site,

(ii) a person who has or has had care, management or control, including care, management and control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance that is over, in, on or under a contaminated site,

(iii) any person whom the Minister considers to be responsible for causing or contributing to the release of a substance into the environment,

(iv) the owner or occupier of, or an operator on, the contaminated site,

(v) any previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at any time when the substance was released over, in, on or under the contaminated site,

(vi) a successor, assignee, executor, administrator, receiver, receiver manager or trustee of a person referred to in subclauses (i) to (v), or

(vii) a person who acts as the principal or agent of a person referred to in subclauses (i) to (vi).

"person responsible for a contaminated site"

Following the designation of a contaminated site for the purpose of remediation or site management, in accordance with Section_of the Act, the Minister shall determine which person or persons connected to a contaminated site are persons responsible for a contaminated site and shall be guided by the following considerations, if such information is available or accessible to the Minister:

(a) when the substance became present over, in, on or under the site;

(b) in the case of an owner, occupier or operator, or previous owner, occupier or operator of the site

(i) whether the substance was present over, in, on or under the site at the time that the person became an owner, occupier or operator,

(ii) whether the person knew or ought reasonably to have known that the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,

(iii) whether the presence of the substance over, in, on or under the site ought to have been discovered by the owner, occupier or operator had the owner, occupier or operator exercised due diligence in ascertaining the presence of the substance before the owner, occupier or operator became an owner, occupier or operator, and whether the owner occupier or operator exercised such due diligence,

(iv) whether the presence of the substance over, in, on or under the site was caused solely by the act or omission of an independent third party.

(c) in the case of a secured creditor, whether the secured creditor influenced the management of the site in such a way as to cause contamination.

S. 89

(1) A person responsible for a contaminated site may

(a) be required by the Minister to prepare a remedial action plan, which may include a risk-management approach, in respect of the contaminated site; and

(b) as written

Designation of a Contaminated Site

The Advisory Committee recommends that the designation process be used to facilitate the clean-up of a contaminated site. This would require redrafting of Section 87, "Designation of contaminated site." Based upon input received, the committee recommends that the Department follow a series of logical steps when dealing with the designation of contaminated sites (refer to Recommendation 27).

Recommendation 27

Establish a time-bound process for the remediation of contaminated sites.

Committee Comments

Proposed steps for the identification, designation, and remediation of a contaminated site:

1. *Departmental staff identify a contaminated site based on specific scientific criteria (to be developed).*
2. *Departmental staff identify persons connected to the contaminated site.*
3. *Departmental staff begin a time-bound voluntary negotiation process to identify "persons responsible for the contaminated site" and the level of responsibility (30 to 180 days).*
4. *The Minister either accepts or rejects the proposal brought forward.*
5. *If the proposal is rejected, the Minister steps in and determines the "person or persons responsible."*
6. *The "person or persons responsible" are required to develop a remediation plan, outlining the apportionment of costs. These plans may, with approval, incorporate a risk-management approach.*
7. *If the plan is not satisfactory, the Minister shall institute an order, proportioning responsibility, based on consideration of factors outlined in a revised Section 129 (see recommended amendment).*
8. *Specific time lines for this process should be defined in the regulations.*

Proposed Amendments

Copy existing Section 129(1) to Part VIII, renumber, and revise as follows:

Factors to be considered before making an order

(1) *In deciding whether to issue an order pursuant to this Part, the Minister shall be guided by the following considerations, if such information is available or accessible to the Minister:*

(a) the economic benefits the person may have received and the relationship between that price and the fair market value of the site had the substance not been present over, in, on or under it;

(b) in the case of a previous owner, occupier or operator whether that person disposed of the interest in the site without disclosing the presence of the substance over, in, on or under the site to the person who acquired the interest;

(c) whether the person took all reasonable care to prevent the presence of the substance over, in, on or under the site;

(d) whether a person dealing with the substance ignored industry standards and practices in effect at the time or complied with the requirements of applicable enactments in effect at the time;

(e) whether the person contributed to further accumulation or the continued release of the substance on becoming aware of the presence of the substance over, in, on or under the site;

(f) what steps the person took to deal with the site on becoming aware of the presence of the substance over, in, on or under the site;

(g) any other criteria the Minister considers to be relevant.

Duty to Report a Contaminated Site

There are many known contaminated sites in the province, ranging from abandoned service stations to major industrial contaminated sites. New contaminated sites continue to be identified, as properties change hands or site assessments are conducted. At present, there is no requirement to inform the Department about the existence of a potentially contaminated site, regardless of size or potential impact. The Advisory Committee recommends that Part VIII includes a "Duty to report a contaminated site" to the Department, similar to Section 69, "Duty to report release." This would facilitate the creation of the contaminated site inventory and provide needed information to establish priority clean-up initiatives (Recommendation 28).

Recommendation 28

Include "Duty to report a contaminated site" in Part VIII of the Environment Act.

Proposed Amendment

Duty to report a contaminated site

Any person who knows or ought to know that a site is or may be a contaminated site must immediately report the site and any information pertaining to its contamination to the Department of the Environment.

Liability

The issue of liability for a contaminated site was raised in a number of submissions, particularly in the context of lenders, trustees, administrators, and receivers. The key question in the case of assessing the level of liability allocated to any one particular "responsible person" is "how much care, management, and control" did the person have over the site in question. The Advisory Committee believes that by separating the terms "person responsible for a release" (Recommendation 22) and "person responsible for a contaminated site"(Recommendation 26), and by providing specific definitions of each, this question can be addressed in a fair and equitable manner. The committee recommends modifying Subsection 165(1) to better clarify the limited liability of this group of potential "responsible persons" (Recommendation 29).

Recommendation 29

Clarify the liability of lenders, trustees, administrators, and receivers involved in contaminated sites.

Proposed Amendment
Responsibility of receivers, receiver-managers, and trustees

165(1) *Notwithstanding anything contained in this Act or the regulations, receivers, receiver-managers, trustees, executors, or administrators of a person responsible for a contaminated site, and their agents and employees, are not responsible for the rehabilitation of a contaminated site under any such provision beyond the value of the assets the persons are administering less the reasonable costs and fees of the administration, in relation to their position as receiver, receiver-manager, trustee, executor, or administrator of the assets of a person responsible for a contaminated site, in respect of any adverse effect that occurred*

(a) before the appointment of the receiver, receiver-manager, executor, administrator, or trustee; or

(b) after appointment, except where the adverse effect occurred as a result of the failure of the receiver, receiver-manager, trustee, executor, or administrator to exercise due diligence.

Waste Resource Management

The Nova Scotia Department of the Environment has made considerable progress in the area of waste management with the implementation of the Solid Waste–Resource Management Strategy. According to the Department's *Public Discussion Paper*, "The establishment of the Resource Recovery Fund, development of local solutions, successful implementation of a beverage container deposit-refund system, and various landfill bans were all instrumental to the success of this program." (*Public Discussion Paper*, p. 3).

Solid-waste-resource strategy

92 The Minister shall establish a solid-waste-resource management strategy for the Province. (1994–95, c.1, S. 92)

Waste diversion goal

93 (1) There is hereby adopted the Canadian target of a fifty per cent solid-waste diversion goal for the year 2000. (1994–95, c.1, S. 93(1))

The Advisory Committee believes that the strategy's success is due, in large part, to the explicit provision in the *Environment Act* requiring the Minister to establish a solid waste–resource strategy with a specific, time-bound, and measurable waste-diversion goal (S. 92, 93(1), see insert above).

Waste-Resource Management Objectives

Many favourable comments were heard on the direction and progress made to date in the area of waste management in Nova Scotia. The public expressed support for continued efforts in this area (refer to Appendix 1). The Advisory Committee recommends updating Section 92 and Subsection 93(1) to reflect the progress made and to reinforce government's continued commitment to solid-waste management in the province (Recommendation 30). The committee also recommends the inclusion of specific "Waste-Resource Management Objectives" at the beginning of Part IX, and has drafted proposed objectives for consideration.

A broad range of comments and suggestions were reviewed by the Advisory Committee, and changes are recommended in five waste management areas:

- Resource Recovery Fund Board
- Deposit-Refund Program
- industry stewardship
- composting
- littering and dumping of waste

Recommendation 30

Update the province's waste-diversion goal and include specific waste-management objectives that emphasize pollution prevention and stewardship.

Proposed Amendments
Solid-waste-resource strategy

92 *The Minister shall maintain a solid-waste-resource management strategy for the province.*

Waste-Resource Management Objectives:

93 *(1) Adopt a 50 per cent solid-waste diversion as a minimum provincial standard, both for the province as a whole, and for each designated waste-resource management region.*

(2) Ensure that solid-waste-resource management is a shared responsibility of all producers of waste, in accord with the principle of stewardship. This responsibility shall be fulfilled through equitable participation in stewardship initiatives and by bearing their associated costs.

(3) Ensure equitable participation in the Solid-Waste-Resource Management Strategy by means of incentives to voluntary industry action reinforced by backdrop regulations that shall be implemented, if necessary, to enforce mandatory compliance with stewardship responsibilities. In cases where voluntary implementation by sectors or by companies within sectors is not achieved by December 31, 2004, the authority to enforce these mandatory provisions shall be implemented by the Department or vested explicitly in the Resource Recovery Fund Board.

(4) Prescribe specific waste-diversion goals applicable to a prescribed class of undertakings, substances, events, regions or industry sectors, that are adequate in sum to ensure that the waste-resource management and stewardship objectives of the province are achievable and that all components of society share equitably in responsibility and action.

Resource Recovery Fund Board

The Resource Recovery Fund Board is a non-profit organization established to administer the implementation of the Solid Waste-Resource Management Strategy. The Advisory Committee heard a number of comments and suggestions related to both the fund and the board itself (refer to Appendix 1).

The Resource Recovery Fund Board is granted authority and given a mandate under the ***Solid Waste-Resource Management Regulations***, Sections 5 to 11. These regulations also outline the minimum required make-up of the board, including three individuals appointed by the Minister, one Regional Waste Coordinator, and a representative of the Union of Nova Scotia Municipalities. Other members of the board are selected by this core group of board members, for a specified term. The committee is concerned that although the Resource Recovery Fund Board is responsible for a program of public interest, its membership appears to be self-perpetuating, and appointment of new members is primarily controlled from within. The Advisory Committee recommends that the process for board appointments be open and transparent and that the board itself represent the range of stakeholder groups, including the Enviro-Depots. Other interest groups, including environmental and community groups, should also have the opportunity to be represented (refer to Recommendation 31). The Advisory Committee is aware of objections to the inclusion of Enviro-Depot representatives on the grounds of conflict of interest. The committee believes that any perceived conflicts are no greater or less than those of existing board members, be they provincial or municipal government or industry representatives, all of whom have a potential financial interest in Resource Recovery Fund Board decisions. Further, the committee believes that community and environmental groups can offer representatives with extensive and varied backgrounds and experience (including business expertise) and thus contribute to the broader evaluation of Resource Recovery Fund Board decisions in light of important environmental and community considerations.

Recommendation 31

Modify the Solid Waste–Resource Management Regulations to require broad representation on the Resource Recovery Fund Board and make the selection process for board members open and transparent.

Committee Comments

Consider including the following as designated positions on the board:

- *Enviro-Depot representative*
- *environmental organization*
- *community interest group*

During the course of the Advisory Committee's tenure, the government announced that $500,000 (year 1) and $250,000 (for each of the next three years) of Resource Recovery Fund Board funds were being directed to the Nova Scotia Department of the Environment to support activities of the Department related to solid-waste management. The process by which this was decided and the uses to which these funds will be applied have not been clearly communicated to the public. It is, for example, not obvious whether these funds have been allocated to general Department revenues or if they have been segregated for specific waste-management programs or initiatives.

The committee heard criticism of this action, ranging from those who felt that such a diversion was inappropriate, to those who expected greater transparency and accountability. The committee believes that this action is a threat to public acceptance of the application of user fees for specific environmental improvements and that it establishes a questionable precedent. At a minimum, the committee recommends clear communication and specific criteria by which the Resource Recovery Fund Board would consider funding programs or activities within the Department (Recommendation 32). The committee also suggests that within the context of the planned consultation of the Solid Waste-Resource Management Strategy the matter receive additional consideration by the public.

Recommendation 32

Develop and communicate specific criteria by which the Resource Recovery Fund Board would consider funding specific programs within the Department of the Environment.

Committee Comments

Consider this matter further within the context of the planned consultation and review on the Solid Waste–Resource Management Strategy.

Deposit-Refund Program

The Deposit-Refund Program for Beverage Containers was introduced in Nova Scotia in the spring of 1996. At the present time, the program applies to all ready-to-serve beverages, except for dairy products. The Advisory Committee heard support for the Deposit-Refund Program specifically, and in general, for the concept of environmental user fees. However, the public stressed that these user fees should be carefully designed and directly applied to environmental improvements related to them. User fees should be consistently and equitably applied to all those who share responsibility for relevant environmental stewardship.

The Advisory Committee agrees with comments received that flavoured milk products should be included in the Deposit-Refund Program. The committee also recommends a reassessment of the portion of the deposit allocated to the Enviro-Depots, to ensure the long-term business viability of this government-designed network of depots (Recommendation 33).

Recommendation 33

Broaden the Deposit-Refund Program and reassess the distribution of the deposit.

Committee Comments

Include flavoured milk products in the list of beverages requiring a deposit.

Reassess the distribution of the deposit to ensure the viability of Enviro-Depots.

The Advisory Committee believes that an important component of the waste stream could be managed by adjusting the current beverage container program. The public commented on the need for improved litter control in the province. Disposable cups and other single serve beverage containers create a significant litter problem, particularly along our highways and public roads, and also contribute to solid waste disposal volumes. The committee recommends that the current definition of "beverage container" found in the *Solid Waste–Resource Management Regulations* (S. 2(f)) be amended to add a second category of beverage container, "not sealed by the manufacturer after the beverage was placed in it." This would capture products such as disposable coffee and soft drink cups. The committee recommends that a system be established whereby a distributor (or producer) is required to pay a levy (for example 2–5 cents) on every disposable beverage container sold to commercial beverage retailers (see Recommendation 34). The money collected would help fund stewardship initiatives.

The Advisory Committee recognizes that many other food items are packaged or served in disposable materials that could be subject to a levy. However, we believe that disposable beverage containers currently pose the most significant litter concern and are most easily captured by expanding current initiatives. The levy would encourage vendors who rely on disposable beverage containers to promote the use of reusable containers or to propose stewardship initiatives.

Recommendation 34

Design and implement a levy program to apply to disposable beverage containers.

Committee Comments

Expand the definition of "beverage container" to include a second category of beverage containers that are not sealed by the manufacturer after the beverage is placed in it.

Provide an incentive for reuse by instituting a levy of 2 to 5 cents on all disposable beverage containers sold to commercial beverage retailers.

Use the money collected to fund stewardship initiatives.

Industry Stewardship

The *Environment Act*, as currently worded, requires the Minister of the Environment only to "encourage industry stewardship" (refer to insert below). One of the tasks assigned to the Resource Recovery Fund Board is "to develop and implement industry stewardship programs" (*Solid-Waste-Resource Management Regulations*, S. 4(1)(a)).

Agreements

95 The Minister may enter into agreements or co-operate with a municipality or other persons to

(e) encourage industry stewardship; 1994–95, c. 1, S. 95(e)

Since the Solid Waste-Resource Management Strategy was initiated in 1995, only one voluntary stewardship agreement has been signed (for milk and dairy containers, in 1999). Although negotiations are under way for agreements in five other areas (derelict vehicles, sharps, fast food, newsprint, and paint), industries, for the most part, are not eager to voluntarily participate in stewardship initiatives.

There was a strong call from the public to mandate stewardship agreements because of the lack of incentive for industries to participate voluntarily (refer to Appendix 1). The Advisory Committee recommends that, if a voluntary agreement for a particular product or sector is not reached with the Resource Recovery Fund Board within a specified time frame, then a mandatory agreement will be imposed by the Department of the Environment. To this end, the committee recommends that a Product Stewardship Strategy be developed by the Minister, in conjunction with the Resource Recovery Fund Board, by 2002 (Recommendation 35). The ultimate goal of this strategy would be to include all products within an equitable product stewardship regime. The current recycling strategy in Nova Scotia creates a perverse incentive to use non-recyclable containers in lieu of recyclable containers. This is because some recyclable containers are banned from disposal, while non-recyclable containers are neither banned nor subject to stewardship requirements. The proposed product stewardship strategy must be based on the "cradle to grave" approach (also referred to as "extended producer responsibility"), ensuring that manufacturers are responsible for the product throughout its life-cycle, including its ultimate disposal.

Recommendation 35

Develop a Product Stewardship Strategy that includes all products within an equitable product stewardship regime.

Committee Comments

Work in conjunction with the Resource Recovery Fund Board to develop the Product Stewardship Strategy by 2002.

Include deadlines for the negotiation of voluntary agreements and impose mandatory agreements if the voluntary process does not work.

Ensure that backdrop legislation mandating equitable stewardship will be imposed if timely stewardship agreements are not implemented.

Composting

Composting

97 The Minister shall promote composting as an option for waste-resource management. 1994–95, c.1, S. 97

In Nova Scotia, compostable organic materials (including food, leaf, and yard waste and soiled and non-recyclable paper) are banned from disposal in the regular waste stream and must be composted. The Department of the Environment states that more than 70 per cent of Nova Scotians have curb-side collection and centralized composting for this material. Backyard composting is also encouraged.

The Advisory Committee received a number of comments from the public regarding composting facilities. These included complaints about odour, contamination, unauthorized feedstocks, and concerns for human health. Many residents are not satisfied with the operating practices of certain composting facilities near their neighbourhoods.

Since the public meetings for this review were held, the Nova Scotia Department of the Environment has modified the *Solid Waste-Resource Management Regulations* to address the growing number of composting facilities operating in Nova Scotia. Under the modified regulations, all non-residential composting facilities (unless composting less that 100 m^3 of leaf and yard waste) must apply for and obtain an approval from the Department. The Advisory Committee hopes that, as the process evolves, a reasonable balance is found between environmental protection and encouragement for worthwhile composting initiatives.

The Advisory Committee recommends that Section 28 of the *Solid Waste-Resource Management Regulations* be enhanced to include a requirement that composting facilities demonstrate adequate training and experience of its operators and staff prior to receiving an approval. The operator should also be required to satisfy the Department that adequate consultations have taken place with nearby residents (Recommendation 36; refer also to Recommendation 17, S. 5 (l)(u) of the *Approvals Procedure Regulations*).

Recommendation 36

Require adequate training for composting facility operators and include a requirement to consult with nearby residents and property owners.

Proposed Amendment
Solid Waste-Resource Management Regulations

Approval application information

28 *In addition to the information required under the Approvals Procedure Regulations, a person who wishes to obtain an approval to construct, operate, expand or modify a facility for composting shall supply the Minister with the following information:*

(a) to (f) plus

(g) relevant training and experience of operators and staff;

(h) proximity to and consultation with nearby residents and property owners.

Littering and Dumping of Waste

The Advisory Committee received a number of submissions that identified concerns about littering and "illegal dumping" in Nova Scotia, ranging from the random roadside discarding of debris (often fast-food leftovers) to the disposal of assorted items and garbage on Crown or privately owned lands.

Environment Act

99 Litter Prevention
127 Litter Control Order

Solid Waste-Resource Management Regulations

Part III—Litter Abatement

19 Prohibition against litter
20 Littering from buildings/structures
21 Construction sites
22 Convenience stores, fast food and vending outlets
23 Public and private events
24 Flyers/advertisements
25 Structures/vehicles on ice

The Advisory Committee strongly supports the view that anyone who generates waste is responsible for the proper disposal of that waste (i.e., waste stewardship; refer to Recommendation 30, Proposed Amendment Section 93(2)). The *Environment Act* and *Solid Waste-Resource Management Regulations* prohibit littering and the dumping of waste(see insert above). However, it appears that the provisions do not effectively discourage littering and the dumping of waste because of the difficulty in obtaining adequate evidence to support a prosecution. Apparently, a successful prosecution would require an eye-witness account and physical proof of the act. The problem may not be easily resolved, but it is a pervasive problem, particularly in rural communities across the province. Recognizing that the Department of the Environment does not have the resources available to have inspectors "stake out"

potential dump sites, the Advisory Committee recommends that the Department explore ways to work with affected communities and community groups to address this problem (Recommendation 37). The "Neighbourhod Watch" program may serve as an appropriate model. The Department should research potential means of simplifying and broadening opportunities to prosecute the "owners" of illegally dumped materials.

Recommendation 37

Develop and implement, in conjunction with community interests, a strategy to curb littering and the unauthorized dumping of waste.

Committee Comments

Work with community groups and volunteers to develop a strategy to curb this illegal activity.

Use the "Neighbourhood Watch" program as a potential model for a program.

Water-Resource Management

Vesting of watercourses

103 "... every watercourse and the sole and exclusive right to use, divert and appropriate any and all water, at any time, in any watercourse, is vested forever in Her Majesty, in right of the Province ..."

3(be) "watercourse" means

(i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not and

(ii) all ground water;

Water is an important resource to Nova Scotians. The Advisory Committee received a number of submissions urging increased protection of the water resource for the long-term use and enjoyment of present and future generations. All watercourses in Nova Scotia are vested in the Crown. This includes both surface and groundwater. (Refer to excerpts from the *Environment Act* above.)

The Advisory Committee recommends water-related legislative changes in the following areas:

- water-resource management objectives
- Water-Resource Management Strategy
- water-use fees
- on-site sewage

Water-Resource Management Objectives

Consistent with Recommendation 3, the Advisory Committee recommends that clear objectives for water-resource management be included at the beginning of Part X. The existing Section 104 includes objectives that the committee believes are appropriate for this new section (refer to Recommendation 38).

Recommendation 38

Insert specific water-resource management objectives at the beginning of Part X.

Proposed Amendments
Water-Resource Management Objectives

(1) Ensure that water is managed sustainably, emphasizing pollution prevention.

(2) Allocate water resources among competing users in a manner that will further sustainable development.

(3) Take such measures as are reasonable to provide access to safe, adequate and reliable water supplies for individual, industrial and agricultural uses.

(4) Ensure the health and integrity of aquatic ecosystems, to protect habitats for animals and plants and to provide for continued recreational benefits.*

(5) Ensure informed decision making in water-resource management through public education and participation.

* *including wetland as defined in the Environmental Assessment Regulations (S. 2(y))*

"Wetland"

Move the definition of "wetland" from the Environmental Assessment Regulations to the Environment Act.

Water-Resource Management Strategy

Nova Scotia lacks a strategy to provide clear direction on the management and protection of our water. The Advisory Committee heard a strong public call for a broadly based, comprehensive, province-wide water-resource management and stewardship strategy. Subsection 105 (2) mandates the Minister of the Environment to "establish a water-resource management strategy for the Province." A draft strategy was developed in 1999, but, to date, it has not been finalized. The Advisory Committee recommends that Section 105 be modified to require the time-bound implementation of this important strategy, including the use of water stewardship boards, on or before January 1, 2001 (Recommendation 39).

Recommendation 39

Modify Section 105 (2) to require the time-bound implementation of the Water-Resource Management Strategy.

Proposed Amendments
Water-resource management strategy

105(2) *The Minister shall establish and implement a water-resource management strategy which meets the objectives set out in section x of the Act.*

Move Section 105 (4), Public participation and advice, to a subsection of Section 105 (2).

Committee Comments

If the strategy is not in place by ***January 1, 2001****, include a specific date for implementation in the Part X of the Environment Act.*

The Advisory Committee believes that the Water-Resource Management Strategy provides an effective mechanism to gain public input and advice on watershed issues. The committee recommends that Section 105 (4), Public participation and advice, be moved to Section 105 (2) to support this link and emphasize the public component of the Water-Resource Management Strategy.

Water-Use Fees

Fresh, clean water, as a commodity, is undervalued and often taken for granted. In Nova Scotia, any activity that withdraws or diverts more than 23,000 L of water per day from a source of surface or groundwater requires a water approval under the *Activities Designation Regulations* (Division 1 – Water Approvals). The Department of the Environment has the authority to collect a fee for the use of this water through the water approvals fee program. The government should not hesitate to equitably extend these user fees to accomplish a broad-based province-wide water-resource management and water-stewardship strategy.

The committee recommends that the current water approval fee structure be reviewed and revised to better reflect the value of this resource and to equitably distribute water-stewardship costs. This will promote water conservation and also provide a much-needed funding source to be applied directly to watershed initiatives (Recommendation 40). The Act should clearly state that the funds raised through the water fee program will be only used for initiatives directly related to the water-resource management objectives (Recommendation 38).

Recommendation 40

Review and revise the water approval fee program to more accurately reflect the value of water.

Committee Comments

Ensure that all users of water pay a fair share. Consider special exemptions for a limited number of users, meeting specified criteria (i.e., small farms).

Apply funds raised to watershed initiatives.

On-site Sewage

The Department of the Environment states that 45 per cent of Nova Scotians have their sewage treated and disposed of with individual private on-site disposal (septic) systems. The Department recognizes an urgent need to improve the management and control of on-site disposal systems throughout the province. In the spring of 2000, the Nova Scotia Department of the Environment introduced a new system for managing the installation or replacement of on-site sewage disposal systems. This new approach relies on private-sector specialists ("qualified persons") to conduct the work and verify the installation. The Department, in future, will review applications, stipulate conditions, issue approvals, and perform spot audits.

The Advisory Committee considers this new approach to be an opportunity to introduce a recertification process for septic systems on a 10-year cycle (Recommendation 41). The committee recommends that all new approvals for septic systems be issued for a 10-year period. In order to be recertified, a system would be required to meet a specified standard. In addition, the committee recommends that all existing systems be inspected and certified within a 10-year

period. In order to encourage certification of older septic systems, the committee recommends providing tax incentives for a period of time (such as the former tax incentives to encourage the installation of solar home-heating systems). The committee further recommends including a requirement for certification within a specified time period prior to the sale or transfer of property. Consideration should be given to assisting hardship and special cases over time from an allocation of some portion of the water-use fees, or through low-interest loans.

It is the committee's understanding that a pilot education program is currently under way to support and encourage proper care and maintenance of septic systems. The committee recommends that a province-wide awareness program be established to support the recertification program described above.

Recommendation 41

Introduce a recertification process for septic systems, on a 10-year cycle.

Committee Comments

Require mandatory participation with new systems and gradually capture older systems through tax incentives, property transfers, and ultimately a 10-year deadline for recertification.

Develop a province-wide awareness program to promote the recertification program and encourage the proper care and maintenance of septic systems.

Consider allocating some of the water-use fees or low-interest loans for hardship cases.

The Advisory Committee received a number of comments related to the Department's use of "qualified persons" from the private sector to oversee the installations and replacements, where some of the "qualified persons" might not meet professional engineering standards. The committee believes that it should be possible to ensure professional qualifications for engineer and non-engineer professionals in the field. It is the committee's opinion that questions and concerns regarding engineering qualifications should be resolved between the Department and the Association of Professional Engineers of Nova Scotia.

Air-Quality Management

Air-Quality Management Objectives

The Advisory Committee received a number of submissions that specifically referred to air quality in Nova Scotia (see Appendix 1). Upon review of the input received and examination of the language in Part XI, the Advisory Committee recommends that the Minister's authority be strengthened and more clearly defined regarding air quality. The committee recommends inclusion of specific air-quality objectives in the Act, which provide the Department with clear direction and time-bound objectives regarding air-quality priorities (see Recommendation 42). The Minister's Task Force on Clean Air (1991) presented three primary goals for air-quality management in Nova Scotia, and the Advisory Committee believes that their work should form the basis of the objectives selected for this part of the Act.

The committee recognizes that this implies that lead agency responsibility in climate change policy and action be shifted from the Department of Natural Resources to the Department of the Environment. The *Environment Act* covers air-quality management and gives the Minister of the Environment substantial authority regarding the regulation of air quality, including the release of air contaminants. The committee believes that the Department of the Environment is the more appropriate lead agency, given that the basis for climate change concern is environmental. At the same time, we appreciate that other departments, and particularly the Department of Natural Resources, have a key interest in these policies.

The committee also recommends that subsection 111(2) be amended to remove specific reference to "toxic, common and nuisance [air contaminants] and odour" and refer only to "air contaminants" (refer to Recommendation 42). This will clarify the confusion that might arise with the use of these undefined terms (toxic, common, nuisance air contaminants and odour) and eliminate the expectation that the Department will deal with any type of nuisance air contaminant or bothersome odour. The Advisory Committee recommends that the *Environment Act* provide the Minister with the power to establish air-emission standards for air contaminants and the ability to regulate for these contaminants (see Recommendation 42).

Recommendation 42

Strengthen and clarify the Minister's authority regarding air-quality management in Nova Scotia.

Committee Comments

Identify the Nova Scotia Department of the Environment as the lead agency of government to fulfil air-quality management objectives.

Review and consider the work of the Nova Scotia Task Force on Clean Air (1991). Enable the Minister to identify air contaminants and regulate for those contaminants (consistent with, but not limited to, Canada-Wide Standards), including mechanisms to require testing, reporting, and monitoring of air quality associated with undertakings.

Proposed Amendments
Lead agency

The Department is designated as the lead agency of Government to:

(a) work to attain desirable levels of ambient air quality;

(b) minimize the release of toxic chemicals to the atmosphere;

(c) reduce emissions of air contaminants that have impacts of global or regional significance.

Powers of the Minister

111 (2) *The Minister may*

(a) establish air-emission standards for air contaminants;

(b)-(g) as written

Air Pollution Prevention Strategy

In 1991, the Task Force on Clean Air recommended the development of a provincial Air Pollution Prevention Strategy. Clean air and climate strategies were also called for by the public in the current review. The Advisory Committee concurs with this recommendation and reiterates it for emphasis (Recommendation 43). This strategy should require clear performance specifications with regard to emissions, directly tied to approvals, supported by monitoring and reporting. Where appropriate, industry must also be responsible for evaluating the impacts of their emissions within specified "air-sheds."

Recommendation 43

Develop a time-bound provincial Air Pollution Prevention Strategy.

Committee Comments

Include in approvals clear performance specifications with regard to air emissions. Require mandatory industry self-monitoring and reporting of air quality, both from stack emissions and ambient air quality within the specified air-shed.

Give industry the responsibility of documenting and evaluating the effects of their emissions within their specified air-shed.

Environmental Industries, Innovations and Technologies

The Advisory Committee received a number of comments from the public regarding the rationale for the Department of the Environment to allocate resources to a program that promotes environmental innovation and technology. Some see this as a departure from the core mandate of the Department. Others expressed support for the work of the program, and argued for the continuation of this aspect of the Department's mandate. (Refer to Appendix 1 for a summary of public comments.)

The Advisory Committee, upon consideration of the diverse views on this issue, and after reflecting on how the Environmental Industries and Technologies Division functions within the Department, supports retaining Part XVII of the *Environment Act*. The committee does, however, recommend that Part XVII be modified to include a clear explanation of the objectives of the Environmental Industries and Technologies Division within the context of the implementation of the Act (Recommendation 44).

Recommendation 44

Link the mandate of the Environmental Industries and Technologies Division with the implementation of the Environment Act.

Proposed Amendment

Insert an Objectives section at the beginning of Part XVII along the lines of:

Objectives

(1) Cultivate a culture of environmental innovation and leadership;

(2) Encourage and promote environmental industries and businesses in order to

(a) develop local solutions to environmental problems; and

(b) market these solutions globally;

(3) Facilitate compliance with the Environment Act through the application of environmental technologies.

In particular, the committee feels that these key objectives of this division include the development of economic opportunities that are in accord with the principles of sustainablility and effective locally based solutions to Nova Scotia's environmental challenges.

Miscellaneous

Part XX clarifies the authority of the *Environment Act* with respect to the statutes that it replaces. It also includes the requirement for a mandatory review of the *Environment Act* and regulations within five years of the Act coming into force (Section 174). The Advisory Committee recommends modifying Section 174 and moving this section to a new part, entitled "Public Participation" (see Recommendation 6 and 10).

The Advisory Committee also recommends that Section 175, Transitional provisions, be modified to require renewals within 10 years for all approvals, permits, and licences granted under environmental legislation prior to 1995 (see Recommendation 45). This will address concerns raised by the public regarding the "grandfathering" of activities that are currently regulated by the Department. At present, there is no mechanism to update these old approvals. This approach is consistent with the committee's call for recertification programs for home heating oil tanks (Recommendation 24) and septic systems on a 10-year cycle (Recommendation 41).

Recommendation 45

Modify Section 175 to require that all approvals, permits, licences, etc., granted before the Environment Act came into effect fall under the Act and must be renewed in accordance with the Act (i.e., within 10 years).

Committee Comments

Develop a process to bring all approvals, permits, licences, etc., up to date by the year 2005.

Require approval renewals on a 10-year cycle.

Proposed Amendment
Transitional provisions

175(1) *Every permit, requirement, licence, approval, order, designation or certificate given, made or issued pursuant to one or more of the acts listed in Section 176 that is subsisting and in force on December 31, 1994, is deemed to have been given, made or issued pursuant to this Act and continues in force until varied, cancelled, suspended, appealed or expired in accordance with this Act.*

Enforcement

The public made a call for stronger and more consistent enforcement of the *Environment Act* and regulations (Appendix 1). A number of specific instances were described to the Advisory Committee that conveyed a loss of public confidence in the Department of the Environment's willingness and/or perceived ability to act to protect the environment through enforcement of the provisions of the Act and regulations. While every such circumstance has unique history and characteristics, the committee perceived a few recurring elements. In general, these situations suggested communication problems, both within the Department and between the Department and the public. Looking at these cases broadly, there appear to be inconsistencies in the interpretation and application of the Act and regulations. This uncertainty of interpretation within the Department has contributed to what the committee and the public have perceived to be a hesitation to act.

The Advisory Committee recommends that an enforcement/compliance policy and guidance document be developed to provide clear direction for departmental staff and the public (Recommendation 46). The policy should include guidance on the interpretation of the term "adverse environmental effect" (see Recommendation 2). It should also provide steps that an inspector should follow when responding to an application for an investigation or a complaint. Clear communication procedures to use in these instances, to ensure that everyone involved is informed, must also be included. Finally, the committee recommends that appropriate staff training and monitoring be conducted to ensure a consistent enforcement approach province-wide.

Recommendation 46

Prepare and distribute an enforcement/compliance policy and guidance document for Department staff and the public.

Committee Comments

Include an interpretation of "adverse environmental effect" with specific examples. Outline the steps to follow when responding to a complaint from the public.

Ensure that a communication plan is clearly defined, both within government and with the public.

Conduct staff training and monitoring to ensure a consistent enforcement approach across the province.

Appendix 1 · Summary of Submissions

In total, 213 people participated in the Legislative Review process. The Advisory Committee received 102 written submissions and listened to 43 oral presentations at 14 public meetings. A list of individuals and groups that participated in the review process is found in Appendix 3. All written submissions are filed in the Nova Scotia Department of the Environment Library for future reference. In addition, specific submissions have been forwarded to the appropriate departmental managers for further consideration. Highlights of the comments and suggestions received from the public are summarized below, by specific topic. The reader is referred to the original submissions for details.

In General

Many people expressed support for the Department's approach and direction with respect to environmental protection since the new *Environment Act* came into place five years ago. Others felt that the Department was spreading itself too thin and was not able to meet the expectations that the Act sets out. Better enforcement of the *Environment Act* was a key message communicated to the Advisory Committee.

Some suggestions include:

- Keep the definition of environment and the focus of the Department broad to reflect the interrelationship of environment, economy, and social aspects.
- Define the core mandate of the Department and then focus efforts on fulfilling it.
- Develop a true business plan for the Department, including priorities and time lines for completion.
- Expand and improve enforcement efforts to make the *Environment Act* more effective.

Adverse Effect

There were completely diverging view points on the inclusion of the phrase "reasonable enjoyment of life and property" in the definition of "adverse effect." The agricultural community and some industries/businesses opted for dropping the clause because of complications or impediments to doing business. A number of individuals and community groups and some businesses insisted that the phrase remain intact. All those specifically questioned about clarifying the term during the public meetings were open to clarification.

Those in favour of retaining the phrase suggested the following:

- Retain odour and noise complaints in core duties when they affect human health (i.e., "... health-risking noise and air pollutants").
- Support was widely expressed for a carefully worded clarification of the term.
- If the Department of the Environment does not have the resources to enforce the "reasonable enjoyment of life and property," perhaps another department should be formed with this mandate.
- There is need for a mechanism to deal with noise, dust, and odour complaints.
- The Department should deal with odour and noise reports, as they are often the first signs of serious environmental problems.
- Consider issuing an interpretation guide, such as the *Occupational Health and Safety Guide* by the Department of Labour. (This interpretation does not have to be part of the Act.)
- By limiting the definition, there is a danger of relinquishing responsibility for some activities that are not captured by other departments. For example, the impact of a jet ski should be under the classification of an adverse effect due to the noise and release of substances into the water.

Those against retaining the phrase suggested the following:

- The phrase is subjective and has allowed "individuals to address personal grievances unrelated to any adverse effects to the environment."
- The separation of technical and civil issues is key to the successful management of issues. Consideration should be given to "the adoption of a concise definition" that is limited only to health and environmental effects and specifically measurable in scientific terms.
- The proposed Farm Practices Bill will resolve the reasonable enjoyment issue and clarify the distinction between pollution and nuisance.

Those in support of clarifying the term suggested the following:

- Explain or better define "reasonable enjoyment of life and property," rather than eliminate it.
- Define "adverse effect" within realistic, achievable bounds.
- Further clarify the meaning of the clause "reasonable enjoyment of life and property" based on a "well-researched approach."
- Clarify the definition in a guidance document to encourage more specific and consistent application of the term.
- The definition contains the term being defined – this adds to the ambiguity.
- The current definition of "adverse effect" is too vague. The definition should attempt to define the word "reasonable." This will sharpen the line between situations relevant to the Act and those that are not. It will also allow more efficient use of limited resources.
- Clarify how the Department weighs adverse effects versus benefits in environmental assessments.

Environmental Assessment Process

A wide range of comments was received related to the environmental assessment process. Many people felt that the process is not sufficiently predictable and does not apply to all projects with potentially significant adverse effects. Others requested clarification and a streamlined process. The main issues and suggestions are highlighted below:

The process in general

- Develop and communicate clearly defined steps and objective criteria to increase certainty and predictability (i.e., guidance documents).
- Emphasize the "One-Window" approach: streamline the process and collaborate with federal counterparts (i.e., Canadian Environmental Assessment Act), other provincial departments, and statutes (i.e., Special Places Act, Endangered Species Act).
- Adopt a "proportional approach" to environmental assessment whereby the scope of the required assessment and the level of public participation are appropriate for the nature and scale of the proposed activities and the potential for adverse effect.
- Incorporate the consideration of cumulative effects and indirect effects in the legislation.
- Increase time lines for review to increase quality/quantity of input: specific suggestions to increase the review period for Class 1 undertakings from 25 days to
  a) 40 days
  b) 2 months
- The current process is too political and fails to effectively incorporate the views of the affected public.
- Change the term "environmental assessment" to "environmental impact assessment."
- The Minister has too much discretion in this part of the Act.

Government "policy assessments"

- Develop a mechanism to ensure that there is an ongoing public debate on government policies and how they can be adjusted to help Nova Scotia move toward a prosperous society.
- The Round Table on Environment and Economy could be given the mandate to carry out policy assessments.

The Environmental Assessment Board

- Permanent board versus temporary panels:
  There were considerable differences in opinion regarding whether or not to abolish the "permanent board" in favour of "temporary panels."
  Those in favour of temporary panels suggest:
  - cost-effectiveness
  - members can bring complementary expertise.

  Those against or with some reservations suggest:
  - little or no public accountability
  - loss of consistency of approach, history of dealings
  - conflict of interest, selection of "qualified persons"
- Include lay participation on the panels.
- All costs of the board or panels should be recovered through fees charged to project proponents.
- Do not involve the board in Section 137 appeals to the Minister.
- The recommendations of the board regarding an environmental assessment should be clearly reflected in the decision of the Minister.

Aboriginal issues

- Develop a formal process that includes the Mi'kmaq People. There is need for consistent requirements between the provincial environmental assessment process and the federal process as it relates to aboriginal issues.
- Key events should lead to contact with the Office of Aboriginal Affairs. These events include those that may directly or indirectly impact:
  - Reserve lands or lands near Reserves
  - aboriginal and treaty rights
  - land title
  - sites of potential archaeological, ceremonial, and/or sacred significance

Public involvement in the process

- Develop more and better opportunities to participate.
- Conduct educational workshops (both within and outside of government).
- Make special considerations for residents who may be affected.
- Establish longer time frames for review.
- Provide intervener funding.
- Require non-technical summaries under the legislated terms of reference.
- Award half of the fine to any member of the public who successfully brings about a prosecution for a violation of provisions or conditions associated with the environmental assessment process.

Class assessments

- Activities of a routine, predictable and repetitive nature should have a more streamlined process for approval.
- Establish undertaking/industry-specific monitoring requirements.

The "List of Undertakings" (Class I and II)

- Several very different options were presented for addressing the list:
  1. Abolish the list and
     a) create a single listing of projects and activities that do not require an environmental assessment (i.e., an exclusionary list) or
     b) provide the Minister with the discretion to require higher levels of assessment and public review where appropriate.
  2. Broaden or generalize the list to capture more types of activities (i.e., the current list is too specific). For example:
     - any alteration of land use
     - potential climate change impacts
     - potential discharge of waste material or non-ionizing or ionizing substances into ground water or surface water.
  3. Expand the list and add more categories of undertakings such as:
     - any activity that has the potential to impact groundwater
     - any activity in an "environmentally sensitive" area
     - large scale forestry operations
     - aquaculture
     - agri-business (i.e., intensive livestock operations)
     - sub-divisions
     - golf courses.
  4. Consider that all undertakings are Class I, with the option to upgrade to Class II at the discretion of the Minister (i.e., 100-series highways).

Wetlands issues

- Re-evaluate the 2-ha size limit for the disruption of a wetland.
- Clarify how a determination is made whether or not an activity has resulted in a disruption of 2 ha or more of a wetland.
- Clarify how cumulative impacts from small irregular disruptions (e.g. infillings) each affecting less than 2 ha of wetland by different proponents will be addressed.
- Wetlands should not necessarily trigger the Environmental Assessment process.

Commence work

- In the case of government departments, the land acquisition process should be considered intent to proceed.

Reporting

- Contract out the focus report to an independent third party to maintain impartiality.
- Insert a clause that establishes that only two deficient reports are allowed per undertaking, following which the undertaking will be permanently denied.

Harmonization

- The process should be more consistent with the Canadian Environmental Assessment Act.
- Incorporate regional, national, and international obligations.

Monitoring and clean-up

- Legislate regularly required monitoring during construction, operation, and decommissioning phases.
- Require project proponents to post a security bond for estimated costs of project clean-up, decommissioning.
- Develop appropriate criteria that outline the factors that the Minister will take into consideration when deciding if the affected environment has been remediated (S. 41 (b)).

Promoting Compliance/Enforcement

There was a strong call for better and more consistent enforcement of the *Environment Act* and regulations. Others supported the Department's "incremental approach" to compliance, and the use of a variety of tools ranging from education to punitive measures. A number of specific examples were described to the Advisory Committee that portrayed a lack of public confidence in the perceived ability of the Department to act to protect the environment (refer to original submissions).

Some suggestions on this topic include:

- No new legislation should be enacted until the Department can effectively deal with the existing legislation.
- Voluntary approaches/industry self-regulation
  - Some people expressed support for voluntary approaches to compliance, including codes of practice. Some felt that voluntary approaches were not effective and preferred a level playing field via legislation (i.e., punitive measures).

  Some suggestions include:
  - Adopt a balanced, incremental approach to enforcement.
  - Proceed with a voluntary approach, backed by legislation with teeth.
  - Encourage industries/businesses to implement environmental management systems.
  - Form partnerships with industries to achieve a high level of environmental performance.
  - An incentive-enforcement approach might be more effective than voluntary compliance.
  - Pollution prevention is a good strategy and should be supported by the proceeds of fines on polluters.
  - Voluntary approaches must meet the needs of the harmonization agreement (federal/provincial).
  - The reality of self-regulation and community-based decision making are questioned in the absence of standards and punitive measures.
- Concerns were expressed about inaction regarding non-compliance, specifically in the area of solid waste-resource management. A call was made for a level playing field in this regard.
- As a deterrent, fines and infractions should be posted on the Department's website.
- Clearly defined criteria are needed for deciding if and when it is appropriate to lay charges (enforcement/compliance guideline).

Economic Instruments/Fees

- Concerns were raised regarding the concept of providing "non-elected" government officials with the authority to apply administrative penalties to fund certain environmental protection projects; no checks and balances.
- Community stewardship or monitoring must be supported by adequate resources, so a mechanism to provide such resources is critical. Greater use of fees and penalties could generate such resources and is in harmony with the "polluter pays" principle.
- There should be no new administrative fees unless the service to the taxpayer is clearly defined. The funds should not be lumped into general revenue.
- Clarify the extent to which the Minister can use economic instruments.
- Industry should fully participate in the design and implementation of any new economic instruments.

Environmental Trust Fund

- Environmental fees and levies could be channeled into the Environmental Trust Fund to support environmental projects. For example, 2 per cent of the gross revenue of the Resource Recovery Fund Board could be deposited in the fund to support broad-based environmental initiatives.
- Use the trust fund to promote research through competitive grants to local/regional universities.

Polluter-Pays Principle

- There was strong support for the "polluter-pays principle" and more effective implementation as suggested in the *Public Discussion Paper*. Some reservations were expressed, however, for making it work on the ground.

Some of the suggestions included the following:

- There will be little to gain by altering the principle, if it is not accompanied by a meaningful approach to implementation.
- Establish a public-private group to explore the concept of "polluter pays" and seek to identify a practical regulatory policy.
- There was support for the recovery of the cost of clean-up and a call for clarity in definition of costs and "responsible persons."
- Through this principle, liability should be imposed on the party or parties who wrongfully caused the pollution. Liability should be based on fault or wrong-doing and in direct proportion to the party's contribution to the pollution.
- Concerns were raised about who pays for orphan contaminated sites. Enhance the Department's ability to effectively engage previous owners and offsite polluters in the recovery of clean-up and remediation costs.

Public Involvement/Engagement

There was a strong call for more and varied means of public involvement and participation.

Some of the suggestions included the following:

- The Department should clarify what it means by public consultation/participation and perhaps adopt a continuum of approaches. Include in the definition "the opportunity to influence."
- Create criteria and indicators for effective public consultation. Once complete, evaluate the process against these criteria.
- The Nova Scotia Round Table on Environment and Economy and other formal structures
  - Abolish existing formal structures if they have proved to be ineffective.
  - The Environment and Economy Committee of Voluntary Planning would be a good alternative to the Round Table.
  - The Round Table was an effective means to move the province toward sustainability.
  - Deformalize the structure; discussion forums need to be open, friendly, approachable, and grassroots-based.
  - Desired outcomes should be carefully considered before options for modification or replacement are considered. A standing group like the Round Table can play an important role in engaging the public and stakeholders in meaningful dialogue.
- Education is considered an important component of public engagement (i.e., school programs, community-based initiatives, etc.). The Department should look for ways to actively involve children.
- Concerns were expressed over relying too heavily on volunteers for input and decision making ranging from:
  - questionable qualifications
  - potential for a biased approach
  - susceptibility to volunteer burn-out
  - excessive strain on limited volunteer resources
- Expand methods for notifying the public about a wide range of environmental matters.
- Develop criteria for the selection of ad hoc committees to conduct public consultations.
- Integrate public consultation into the approvals process.
- Community-based advisory groups should be established in the regions to help interpret environmental information for the broader community, guide the process, and display the myriad of resources available to assist projects/environmental initiatives.
- Ownership of local environmental issues should also include community-based decision making to a certain extent.
- The environmental registry
  - Expand S. 10 (1) to include "the Minister shall establish, **operate and maintain** an environmental registry."
  - Harmonize it with the Registration 2000 initiative.
  - Ensure that information is open and accessible; fines should be levied for not providing full disclosure to the province's Freedom of Information officer.

Approvals

- In order to renew an approval, the company should be required to show proof that they have made progress in minimizing the "approved releases."
- Require greater public participation in the establishment of the terms/conditions of an approval.
- Approval criteria should be set in regulation. Government should be more specific in wording terms and conditions of approvals.
- Address, through regulation or otherwise, the concern that there is no lead time provided to a person to obtain the necessary approvals for pre-existing activities that are ongoing and for which approvals were not required in the past.
- Inform the approval holder about the document source used to establish the approval limits for various contaminants, thus allowing the approval holder to regularly review and update information and practices.
- Include or enhance/reassess the approval process for:
  - gravel pits/quarries
    Numerous pits are active without an approval. Decrease the minimum separation distance from blasting operations from 800 metres to 90 metres for pits and quarries
  - land disturbances (including logging to within 50 metres of a watercourse).
- Introduce a no-cut buffer zone of 100 metres around any watercourse that appears on a 1:50,000 scale topographic map.
- Set the time frame for approvals and renewals of approvals to a maximum of 25 years.
- Post the current and new approvals on the Department's website.
- Clearly distinguish the process for a new approval versus the renewal of an existing approval. The renewal process should be simplified, with only modest expectations for change.
- Continue the mandatory time lines for the approval process.
- The current dam relicensing process needs to be revised regarding:
  - access to information
  - open, transparent process
  - public input/participation
  - lack of consideration for the "multi-use concept."

Release of Substances

- Reconcile Sections 67 and 68 to resolve any contradiction and clarify the standard being applied to prohibit polluting activity.
- Define "significant" in the context of "significant adverse effect."
- Clarify the phrase "knows or ought to know of the release." The "duty to report a release" and the "duty to take remedial measures" should be limited to when a person becomes aware, as it makes no logical sense to impose such an obligation on a person who has no actual knowledge of the release.

Dangerous Goods and Pesticides

- Eliminate the use of non-essential [cosmetic] pesticides.
- Pesticide use is making people sick and causing a financial burden on the health care system.
- Obligate retailers to inform and warn consumers about the health impacts of pesticides.
- Address the management of toxic substances (i.e., how will the CCME Toxic Substance Management Policy be implemented?).
- Update the *Petroleum Storage Regulations* to include the issue of reconciliation of above-ground and underground tanks.
- Broaden Part VII of the Act to apply to all forms of pesticides, insecticides, herbicides, and fungicides.

Contaminated Sites

The public expressed considerable support for making progress regarding contaminated sites. Most industries are in favour of keeping the process voluntary in nature (i.e., proponent driven), while other groups prefer a much more rigorous approach. Some contributors provided detailed proposals for their preferred approach to contaminated sites, and the reader is referred directly to these submissions.

Some suggestions included the following:

- Consult with industry before developing and initiating a contaminated sites program.
- Implement a "proponent-driven" management process that incorporates a risk-based corrective action (RBCA) approach and other risk-management tools. Some specific suggestions:
  - Include RBCA directly in the Act.
  - Broaden the scope of RBCA to include more than petroleum products.
  - Develop a good "site professional system" that focuses resources on auditing and enforcement rather than on review and approvals.
  - Develop clear standards for stakeholders to refer to when assessing risk.
- Focus on building on the existing voluntary management guidelines for dealing with contaminated sites.
- The present management guidelines are not always applied consistently, and a more formalized approach is needed (some suggest via regulations).
- There were objections to adding any separate reporting requirements for contaminated sites.
- Co-ordinate the strategy with other Atlantic provinces to maximize consistency in the region.
- Voluntary processes for the management of contaminated sites are unsatisfactory. Rigorous management and time lines for remediation are essential, as is the right to cost-recovery, wherever possible.
- Clearly define all costs associated with a comprehensive contaminated sites strategy. Include a process for cost-recovery, based on extensive public and community input.
- Refer to the "Industry Proposal for the Management of Contaminated Sites" as submitted by a number of industry representatives.
- Create and maintain an inventory of all contaminated sites (both designated and not designated). This could be included in the Environmental Registry.
- Provide notice on the property deed if a site is determined to be contaminated.
- Include a definition for and recognition of a remediated site and a managed site.
- Mandate the obligation to designate a site, once it has been determined to be contaminated (based on requisite criteria). (Refer to section 129.)
- Clarify the responsibility for a contaminated site by introducing two new definitions:
  - "person connected with a contaminated site"
  - "person responsible for a contaminated site"
- Add a provision(s) that will enable the Minister to develop a strategy to deal with:
  - orphan sites, and
  - the allocation of clean-up costs.
- Clarify the term "person responsible" with reference to a contaminated site, and include a well-defined mechanism to assign responsibility.
- Other detailed comments include such issues as site assessment, reporting, time lines, remediation standards, property transactions, disclosure, etc. (refer directly to the submissions).

Solid Waste-Resource Management

The public made numerous comments and suggestions relating to solid waste management in Nova Scotia. Many expressed support for the progress made to date in diverting solid waste from our landfills and incinerators. The main topics are listed below, along with a brief summary of the points of view expressed:

Enforcement

- Requests were made for consistent enforcement of the *Solid Waste-Resource Management Regulations* across the province and the desire for a level playing field.
- Allocate sufficient staff to enforce the solid-waste provisions, especially source separation at convenience stores, fast food outlets, campgrounds, and public events.

Strategy and the diversion goals

- No more bans – focus on making the existing *Solid Waste-Resource Management Regulations* work.
- Explore and promote alternative waste-reduction methods (i.e., glass milk bottles, cloth bags for groceries).
- Ensure the proper handling and disposal of "oily soil" throughout the province. (In some locations these soils are being landfilled.)
- Establish a process of ongoing public review and update of the strategy (at least every five years).
- Consider requirements for a periodic environmental and economic cost/benefit study and public review with regard to materials banned, reduced, composted, or recycled, as well as for any new materials added to the banned list.
- Update the waste-diversion goal to maintain a minimum 50 per cent solid waste diversion rate; each region should adopt and achieve the 50 per cent diversion target.

Bans and programs

- Include milk or, at a minimum flavoured and single-serving milk beverage containers, in the Deposit-Refund System.
- Include tires from off-highway vehicles in the tire program.
- Prohibit the use of non-compostable or degraded plastics.
- Replace all non-degradable plastic bags with degradable plastic/starch bags of all types.

Packaging

- Packaging stewardship should not be the sole responsibility of the beverage industry. Initiatives should be in place to ensure other industries accept their fair share of the costs of managing their products and/or packages.
- Develop and implement a packaging protocol to encourage the reduction of packaging.

Stewardship agreements

- Mandate stewardship agreements that obligate industry to share the real cost of managing the waste they produce.
- Move the responsibility to develop stewardship agreements from the Resource Recovery Fund Board to the Nova Scotia Department of the Environment.
- Funds gathered by stewardship agreements should be administered jointly by the Resource Recovery Fund Board and the Union of Nova Scotia Municipalities.
- Product stewardship agreements with Canadian federal government departments and agencies should be recognized by the provincial government and deemed to satisfy all of the environmental requirements of the province.
- Encourage industry stewardship programs by pragmatic legislation to facilitate the collection, transportation, and processing of household hazardous wastes in general, and spent rechargeable batteries in particular.
- The province should provide fall-back legislation to ensure a level playing field so that all industries in a given sector contribute fairly to a stewardship program.

Resource Recovery Fund Board

- Expand the board to include representation from Enviro-Depots, the general public, and an environmental group.
- Define the board more broadly, and differentiate between the board and the fund. Clearly state the role of both.
- Ensure that fund finances are independent from government.
- Use all monies in the fund exclusively for the intended purpose, lest they be viewed as a government tax rather than a stewardship initiative.
- Modify the Act to define specific objectives for the use of the fund.
- Some of the activities of the Resource Recovery Fund Board belong with the Department of Economic Development, or not with government at all.

Enviro-Depots

- Enviro-Depots are superfluous now that most communities have access to curbside recycling. They should be closed and the funds used to support other programs.
- Municipalities should not have unofficial depot status, in direct competition with designated Enviro-Depots.
- The adequacy of handling fees for depots should be reviewed regularly.

Incineration

- Consider incineration as diversion and include it in the calculation of the waste-diversion goal.
- Consider "Energy from Waste" as an acceptable waste-disposal option.
- Eliminate incineration because of the air emissions and potentially toxic residual and fly ash.
- Re-examine the way medical waste is disposed of in the province.

Illegal dumping

- A stewardship agreement is needed with the fast food industry to help address the issue of illegal dumping.
- Establish enforcement policies for littering and the placement of recycling containers at public events and corner stores.
- Review fines for littering and determine whether or not they are high enough to act as a deterrent. Improve communication about the fines and conduct a widespread awareness campaign.
- Eliminate tipping fees at landfill and incinerator sites to discourage illegal dumping.
- Both the "dumpers" and those who generated the waste should be subject to fines.
- Address the problem of roadside litter and specifically deal with the disposal of Tim Hortons cups.

Composting

- Redefine "backyard composting" to allow the gardener and farmer to collect compostables from restaurants and grocery stores.
- Require adequate training for staff of compost facilities.
- Require sludge (from various sources) to be properly composted before disposal.
- Impose third party liability fines for the generators of organics so that they will be responsible to ensure that the material they generate is handled by a properly permitted composting facility.
- Require a potential composting facility operator to consult with adjacent land owners prior to the Department's granting an approval.
- Limit the facilities that accept dangerous feed-stocks (i.e., containing heavy metals, sewage) to those that have the capacity and ability to manage these materials properly.
- Introduce a system of bonding for all composting facilities; clean-up should be put up for tender.

Water-Resource Management

Many people expressed support for the Water-Resource Management Strategy and called for its immediate implementation. Some expressed concerns that little effort was made to inform the public about the strategy. Some very specific suggestions were also made regarding the management of water in Nova Scotia, and the reader is referred to the original submissions for details.

Some of the issues and comments included the following:

The Water-Resource Management Strategy

- Adopt a strong and comprehensive Water-Resource Management Strategy for the province in order to fulfil its promise of a sustainable approach.
- Improve and expand working relationships with municipalities in order to successfully implement watershed management.
- Require water-quality guidelines as part of the strategy.
- Publicly review the strategy every five years.
- Include wetlands in the scope of water resources over which the Minister has supervision (S. 105).
- Immediately inform the general public about the water strategy and the implications of the strategy.
- The reliance on volunteer resources throughout the strategy will place increasing burdens on both individuals and groups without providing needed support.
- Establish local watershed stewardship boards.
- Improve the public consultation component of watershed issues/approvals.

Department roles and responsibilities

- The Department should be the lead agency to control land development.
- Establish a credible, quasi-independent "lakes authority."
- Hire staff with backgrounds and expertise in limnology and marine biology.
- Direct more resources to water-quality protection than to solid-waste management.

Powers of the Minister (S. 105(3))

- Expand to regulate waste-load discharge rates and discharge locations in bodies of water.
- The authority to operate utilities creates a conflict between the departmental role as regulator and operator; section 105(3)(o) should be eliminated.
- There are a number of potential overlaps between the *Environment Act* and the *Oceans Act* regarding powers of the Minister, particularly a, c, d, e, f, g, i, and j. The extent of overlap depends on the definition of water.

Monitoring and assessment

- Education and research are very important for water-related issues.
- Build comprehensive databases to describe the water resources of the province and base decisions on water allocation and use on factual data.
- Include monitoring and auditing requirements in approvals for water withdrawals to ensure that the most efficient methods available are used.

Watershed protection

- Adopt federal government acts and regulations as they benefit or protect our waterways and transportation (i.e., sewage discharge from boats – *Canada Shipping Act*, 1991).
- Enact and enforce legislation that makes holding tanks mandatory on boats using the Bras d'Or Lakes.
- Establish a "beneficial use impairment and assessment subcommittee" to manage pollution control as it relates to important lakes and rivers in the province.
- Restrict raw manure spreads and chemical fertilizers in agriculture districts to protect the adjacent watercourses.
- Increase protection for:
  - riparian zones
  - groundwater resources
  - areas adjacent to drinking water wells
- Ban bulk water exports.
- Consolidate procedures that are designed to protect groundwater (i.e., excerpts from the *Petroleum Storage Regulations*, *PCB Management Regulations*) into one regulation.

Water impoundments/hydro dams

- Concerns were raised regarding water impoundments and the adverse effect that they have on the biological health of our rivers.
- Require scheduled water releases for recreational purposes during the low water season.
- Revise current dam relicensing process regarding:
  - access to information
  - open, transparent process
  - public input/participation
  - lack of consideration for the "multi-use concept"

Well construction

- Increase the minium casing length to 12.2 metres (40 feet).
- Require all wells to be grouted to a minimum depth of 9.2 metres (30 feet) to add a precautionary level of protection to groundwater supplies throughout the province.

On-Site Sewage

- Ensure that the final approvals for on-site systems rest with and are accountable to the proper public agency.
- Review and correct technical errors in the *On-site Sewage Disposal Systems Regulations* (i.e., size of gravel specified, the odd and inconsistent direct metric conversions, etc.).
- Wetlands should be incorporated into the design of a system, because of their potential for naturally cleaning and filtering the wastewater.
- "Qualified Person 1" and "Qualified Person 2"
  - There was strong opposition to non-engineers doing engineering work, in direct conflict with the Engineering Act.
  - Remove or correct any clause in the *On-site Sewage Disposal Systems Regulations* that refers to a QP 2 not working under the supervision and direction of a Professional Engineer licensed to practise in the Province of Nova Scotia.

Grandfather Clause

- Any confusion about the existence of a grandfather clause with respect to a variety of issues (i.e., septic systems, approvals, etc.) should be clarified and communicated to staff and consistently applied throughout the province

Air-Quality Management

- Develop and implement clean air and climate strategies.
- Consider the enhancement of provincial legislative controls such as ground-level ozone and stratospheric ozone depletion.
- Incorporate the requirement for implementing Canada–Wide Standards for important air pollutants such as particulate matter, ozone, dioxins, furans, benzene, and mercury.
- Develop an initiative to control automobile emissions. Enforcement and testing can be made cost-neutral through test fees, and the improvement would be visible and rapid.
- Require source testing on a regular basis for new or major sources receiving permits, and on a problem identification and solution basis.
- Greater support is needed from the provincial government for training in air pollution and control and in noise assessment.
- Consider adjusting the minimum kiln size in the *Activities Designation Regulations* to require smaller kiln operations to obtain an approval.
- Promote action on trans-boundary pollution. Nova Scotia should be a leader in dealing with trans-boundary pollution issues.
- Encourage alternative energy sources.

- Recognize and respond to cumulative effects of polluting emissions from groups of sources, as opposed to considering the impact of individual industrial releases (i.e., air-shed approach).

Orders

- Make the alternative dispute resolution process available to the apportionment of costs pursuant to Part XII (Orders) of the Act.
- Describe what is meant by "take such action as is deemed necessary" in the context of Section 125(1)(l).
- The Minister should be obligated to provide reasons for a Ministerial Order. The Minister should be guided by accepted standards, guidelines, and criteria in deciding the terms of the order and to which party or parties the order is to be directed.
- Clarify the situations in which the Minister can amend a term or condition or add to or delete from an order.
- Enable the Minister to deal with "genetically modified organisms" through a Ministerial Order.

Appeals

Some very specific suggestion for changing words and clauses were made regarding appeals and civil remedies and the reader is referred directly to the submissions for an understanding of these suggestions. Some comments include:

- Insert a statutory provision requiring an appellant (person aggrieved who is not the proponent) to provide written notice of the appeal to the proponent.
- Make it mandatory for an appellant to make an application in a proper form in order to contain all the relevant information.
- Allow appeals
  1. in all cases; or
  2. in limited specified circumstances; or based upon an application for leave to appeal where a prima facie case must be established.

Liability

Concerns were raised about the fairness of the current provisions in the *Environment Act* to identify "person responsible" and assign liability with respect to contaminated sites and the release of a substance. Other liability issues were also raised.

Some suggestions include:

- Clarify that lenders and their agents do not fall within the definition of "person responsible," "owner," "occupier," and/or person with "care management or control" of a contaminated property unless they have caused or contributed to the contamination of the site.
- Parties should be held liable only in the event and to the extent that their activities cause or contribute to a breach in the Act.
- Exclude the liability of the product generator, manufacturer, distributor, or transportation coordinator, unless directly involved in the contamination case.
- Recognize a category of landowners who purchased their property prior to the Act coming into force and now discover that a prior release has taken place. These landowners should not be subject to the provisions of the Act, or they should be able to negotiate an agreement under the umbrella of a statutory restriction that would limit their financial liability regardless of any subsequent agreement that might be reached with the Minister.
- Eliminate the concept of joint and several liability (S. 134) and assign responsibility for clean-up through a cost-apportionment mechanism.
- Clarify Subsection 134 (4) to indicate that parties are liable only for that portion of the contamination they caused.
- Restrict any superpriority lien solely to the contaminated site or, at the very most, to real property that is also contiguous and part of the same operation that caused the environmental conditions at the site.
- Recognize that fiduciary trustees ought not to be held liable for contamination solely because they have directed or influenced an activity or business in the capacity of, or as a result of, their appointment as a director or officer of a corporation.
- Protection from liability (S. 143) seems to lead to inaction.

Environmental Industries and Technologies

There were differences of opinion expressed about the role of the Environmental Industries and Technologies Division within the Department. Some felt that this function would be a better fit with other government departments, or entirely outside of government. Others supported the work of the division and recommended continued support for this initiative.

Some comments and suggestions include the following:

Lead agency

Those that supported the Department as the lead agency suggest that there are benefits to the work of the group.

Those against the Department as the lead suggest that:

- The Department's role as promoter and developer puts it in conflict with its regulatory role.
- Let the federal Busines Development Bank of Canada and the Atlantic Canada Opportunities Agency/Economic Development worry about viable business opportunities. The Department should focus on environmental protection only.
- This function more closely aligns with Economic Development or Technology and Science.

Management Consortium

- Remove the consortium. Any new structure should have a balanced representation so that no one stakeholder or group can take control.
- The Environment and Economy Committee of Voluntary Planning would be a good alternative to the consortium.

Ecosystems/Biodiversity

- The Act does not deal effectively with ecosystems (i.e., forests, wetlands, coastal ecosystems), and changes need to be made to address this.
- Strengthen the linkages between ecological and human health.
- Re-examine how natural ecosystems are valued and how protective measures are applied at the working level.
- Biodiversity should be imparted a top priority. A lead indicator of biodiversity is stream and lake benthic macro-invertebrates.

Protected Areas

- Expand regulation of "environmentally sensitive areas."
- There was a perceived conflict between the Department of Natural Resources and the Department of the Environment; DOE must protect the environment.
- A non-exclusive list of sensitive areas should be provided by regulation. The 31 protected areas would be a good starting point for this.

Sustainable Development/ Integrated Environmental – Economic Accounting

- Integrate an accounting system that fully values both natural resources and environmental quality.
- Mandate a sustainable development strategy by each government department, to be monitored by the Auditor-General.

Harmonization/Multi-jurisdictional issues

- Work collaboratively with other governments to streamline the regulatory process.
- Environmental protection should reside with the provincial government, with federal interests being managed through one regulatory process, that of the provincial government.
- Work together for cost-effective delivery; build explicit linkages and harmonize processes where possible.
- Clarify provincial/federal jurisdictions (i.e., work in coastal waters/shorelines).
- The Nova Scotia Departments of the Environment and Natural Resources are in a conflict of interest.

Training

- Department staff need to be educated about legislation and policies. Examples provided include wetland environmental assessment requirements, watercourse alteration, and definitions.
- Self-regulation should include the need for the industry participant to have a trained (or certified) work force.
- Develop work force standards for those involved in reporting on contaminated site work, including assessment, remedial action, and reporting.
- Greater support is needed from the provincial government for training in air pollution and control and in noise assessment.
- Require training for staff of composting facilities.

Other Definitions

In some instances, new or modified definitions were presented to the Advisory Committee. The reader is referred to the specific submissions for proposed changes/additions/deletions to the following definitions:

Recommendations to change the following existing definitions:

- contaminated site
- municipality
- person responsible
- person responsible for the contaminated site
- precautionary principle
- registered owner
- release
- undertaking
- water resource
- watercourse

Recommendations to add the following definitions:

- aquatic ecosystem
- care, management and control
- commence work (with respect to the Environmental Assessment Regulations)
- diversion
- environmental impact assessment
- environmental management system
- greywater
- litter
- person responsible for a release
- precautionary approach
- public consultation public participation
- recovery
- rehabilitation
- restoration
- secured creditor
- significant adverse effect
- trustee
- waste resource
- water (in relation to the terms used in the *Oceans Act*, Part 1, Section 6)
- watercourse alterations
- wetlands

Appendix 2 · Participants

The Advisory Committee acknowledges and thanks all those who provided input into this review process. This includes members of previous task forces and consultation committees, various staff from Nova Scotia Department of the Environment, as well as more than 200 individuals, representing companies, organized groups, and concerned citizens. The list below includes the names of individuals and groups that made oral and written submissions to the Advisory Committee, as well as those that registered and attended the public meetings. The Advisory Committee extends a sincere thank you to these individuals for taking the time and effort to help improve environmental legislation in Nova Scotia.

Individuals

Neil Allard
Brian Anderson
Diana Austn
Mannie Avelia
Alex Avila
Irene Avila
Carl Baillie
Richard Baker
John Baldwin
Garth Bangay
Tracey Barbrick
Kim Barkhouse
Pat Bates
Catherine Beaudoin
Mary Beaver
Neil Bellefontaine
Eugene Best
Osmundo Betancourt
Ken Bickerton
Kevin Blair
Rebekah Blok
Carolyn Bolivar-Getson
Pierre Breau
Amy Brennan
Mark Brennan
Lynn Brooks
Susan Brown
Rennie Bugley
Rosemary Burns
Derrick Cameron
Lorna Carroll
Andrea Caven
Gloria Chao
John Chisholm
Bob Chouinard
John Cline
Phillip Collins
Ron Colman
Michael Comeau
Marquessa Cook
Norm Cook
Boyd Crouse
Kermit deGooyer
Dave D'Eon
Patricia Dietz
Meinhard Doelle
Ken Donnelly
Gerard Dugas
Gareth Duncan
Karen Durnford
Laurie Emms
Matthew Enders
Luc Erjavec
Owen Evans
Calla Farn
Patrick Farrell
Robert Federico
Steve Ferguson
Barrie Fiolek
Eric Flanders
Fulton Forgeron
Heather Forsythe
Janet Fryday-Dorey
Henry Fuller
Harry Gallian
Mrs. Gallian
Elmer Garber
Greg Gaudet
Ruthanne Geddes
Willie Gelevan
Michael Gilbertson
Marcus Goodick
John J. Gould
James Goyetche
Daniel Graham
Ken Graves
Shannon Graves
Norm Gridley
John Griffiths
Gary Gunnell
Melissa Haley
David Haley
Fred Hall
George Hamlin
Ron Harper
Tom Harz
Theresa Hawkesworth
Matthew Heemskerk
Katrin Heim
Debbie Hendriksen
Terry Hennigar
Peter C. Hill
Colin Hines
W. D. Hogg
Lonnie Howe
Cathy Hunt
Elke Ibrahim
David Janigan
Betsy Jardine
D. S. Jenkins
Victoria Jenssen
Peter Johnson
John Jones
Donald Julien
Sue Kent
Greg Landry
Michael Langman
Karen Lewis
Sven Linkruus
D. J. Little-Gallian
Neal Livingston
Stephen Lutz
Mary Macauley
Michelle MacDonald
Margaret MacInnis
Aaron MacIntyre
Ken MacLean
Blair MacLellan
D. G. MacLellan
Karen MacLellan
Stephen MacLellan
Lorna MacPhee
Sharon MacPherson
Byron Mailman
Shalom Mandaville
Belinda Manning
Michel Martin
Allison McEachern
E. K. McLellan
Judy McMullen
Kennith Meech
Ray Merriam
Robert Merrick
Kevin Mills

Bill Mont
Charles Musial
Laurence Nason
Lee Nauss
Doug Neil
Albert Njeim
J. V. O'Brien
Peter O'Brien
Keith O'Callaghan
Paul Oldford
Heather Paquet
William Pembroke
Vera Pierro
Jeffrey Pinhey
John Prall
Elizabeth Publicover
Elizabeth Pugh
Douglas Quinn
Gerald Ralph
Maureen Reynolds
Tom Reynolds
Greg Roach
Allan Rodger
Britt Roscoe
Tom Rudolph
Patricia Rustad
Jerry Ryan
Donald Sam
Louis Samson
Mike Sauerteig
Mark Sidebottom
Richard Skinner
Shawn Smale
Andrew Smith
Brian Smith
Bruce Smith
Dick Smyth
Carol Snider
Dusan Soudek
Richard Southcott
Nancy Spencer
Don Stallard
Allan Sullivan
Tim Sullivan
W. R. Sutherland
Gertrude Sweeney
David Swinamer
Judy Swinamer
Marjorie Swinamer
Daphne Thorburn
Terry Toner
Pius Trainor
Bob Tunnah
John Underwood
Brian van Rooyen
Leslie Wade
John Walker
Lester Ward
Everett Watkins
Martha Weldon
Sirje Weldon
Chris Wentzell
Jack Wentzell
Jeff Wentzell
Laura Wentzell
William West
Brenda Whitman
Garfield Whitman
Rick Whitman
Maxine Whynot
Richard Wilson
Tammy Wilson
Maureen Woodlock
Blake Wright
Donald Wright
Dan Wurster
Arthur Young
Frank Zechner
Don Zwicker

Groups

Alliance of Manufacturers and Exporters Canada
Amaranth and Associates
Association of Environmental Auditing
Association of Professional Engineers of Nova Scotia
Atlantic Coastal Action Program – Cape Breton
Atlantic Partnership in RBCA Implementation
Bras d'Or Lakes Stewardship Society
Bruce L. Smith Consulting
Canadian Bankers Association
Canadian Bar Association
Canadian Federation of Independent Business
Canadian Forces Base – Halifax
Canadian Petroleum Products Institute
Canadian Restaurant and Foodservices Association
Canadian Soft Drink Association
Canoe Nova Scotia
Cape Breton Island Industry Skills Council
Cape Breton Regional DevelopmentAuthority
Cape Breton Regional Municipality
CBCL Limited
Citizens of Kings County
Civil Engineering Limited.
Coalition of Environmentally Concerned
Coastal Oceans Association Incorporated
Communities of Kings County
Confederacy of Mainland Mi'kmaq
Conrad Brothers/Soils Remediation Technologies Limited
D. S. Jenkins & Associates
Dillon Consulting
Ecology Action Centre
Environment Canada
Environmental Sciences Management Group
Environmentally Concerned
Fisheries and Oceans Canada
Friends of the Yarmouth Light
GPI Atlantic
Halifax Regional Municipality
Imperial Oil – Dartmouth
Irving Oil Limited
Jacques Whitford Environment Limited
Kings County Community Economic Development Agency
LaHave River Watershed Enhancement Foundation
LandDesign Engineering Services
Lighthouse Environmental
Local Council of Women, Halifax
Lunenburg Queens Regional Development Authority
Lunenburg-Queens Federation of Agriculture
Margaree Environmental Association
Martec Limited
Melford Concerned Citizens
Michelin North America
Millwood Environmental Action Team
Municipality of Annapolis County
Municipality of Colchester County
Municipality of Cumberland County
Municipality of the County of Richmond
Municipality of the District of Lunenburg
New Era Farms
New Waterford Fish and Game Association

Nova Construction Company Limited
Nova Scotia Department of
Aboriginal Affairs
Nova Scotia Department of Agriculture
and Marketing
Nova Scotia Department of Fisheries
and Aquaculture
Nova Scotia Department
of Natural Resources
Nova Scotia Department
of Transportation and Public Works
Nova Scotia Federation of Agriculture
Nova Scotia Nature Trust
Nova Scotia Power Incorporated
Nova Scotia Road Builders Association
NS and PEI Bottle Dealers
and Recyclers Association
Out'N About Adventures
Over Time Construction
PFC (Tesma International Inc.)
Portland Estates Residents' Association
Real Alternatives to Toxins in the
Environment
Rechargable Battery Recycling
Corporation of Canada
RKR Transport
Soil and Water Conservation
Society of Metro
Southwest Paddling and Rowing Club
Stora Enso
Strait Watch Waterways Association
Sullivan's Environmental Services
Town of Berwick
Town of Windsor
University College of Cape Breton
Valley Waste Resource Management
Voluntary Planning
Wagmatcook Band Council
Wagmatcook Fishery Guardians Officers
Waste Check
Weed Man – Bridgewater
Whycocomagh Consolidated School
Wright Research

Appendix 3 • Summary of Definitions

Section 3, Interpretation, contains the definitions of terms used in the *Environment Act* and regulations. Other terms are defined directly in the regulations. The Advisory Committee proposes a number of changes to the definitions presented in the Act (Section 3) and regulations. These changes appear throughout the text of this report, in the appropriate sections. The following is a summary of the committee's recommended additions/ modifications and deletions to definitions in the Act and regulations. Definitions proposed by the committee are presented in *italics*.

Definitions to Be Added

From Section 3

Define the terms introduced in the Purpose section (as proposed in Recommendation 1) :

- "ecological value"
- "precautionary approach"
- "pollution prevention"
- "shared responsibility"
- "stewardship"
- "polluter pay"
- "fairness"
- "public participation" means
  the meaningful and accessible opportunity for the public to influence government decision making pertaining to the substance of the Environment Act or other environmental matters affecting or affected by Nova Scotians.
- "adverse environmental effect"
  [Refer to Recommendation 2.] means
  an environimental effect that impairs or damages the environment, including those aspects of human health that are or can be affected by contaminants or changes in the environment.
- "person responsible for a release"
  [Refer to Recommendation 22.]
  Base the definition on the principle of polluter pays.
- "person connected to a contaminated site"
  [Recommendation 26] means
  (i) the owner or previous owner of the substance that is over, in, on or under the contaminated site,
  (ii) a person who has or has had care, management or control, including care, management and control during the generation, manufacture, treatment, sale, handling, distribution, use, storage, disposal, transportation, display or method of application of a substance that is over, in, on or under a contaminated site,
  (iii) any person whom the Minister considers to be responsible for causing or contributing to the release of a substance into the environment,
  (iv) the owner or occupier of, or an operator on, the contaminated site
  (v) any previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at any time when the substance was released over, in, on or under the contaminated site,
  (vi) a successor, assignee, executor, administrator, receiver, receiver manager or trustee of a person referred to in sub clauses (i) to (v), or
  (vii) a person who acts as the principal or agent of a person referred to in subclauses (i) to (vi).
- "wetland" [Recommendation 38]
  Move the definition from the *Environmental Assessment Regulations* (S. 2(y)) as follows:
  "land commonly referred to as marshes, swamps, fens, bogs, and shallow water areas that are saturated with water long enough to promote wetland or aquatic processes which are indicated by poorly drained soil, vegetation and various kinds of biological activity which are adapted to a wet environment."

Definitions to Be Modified

From Section 3

- 3(l) "contaminated site"
  Replace the current definition with one based on specific scientific criteria.
- 3(v) "environmental effect"
  [Refer to Recommendation 2.] means
  any change, whether negative or positive, to the environment, and any change caused by the environment.
  To create this modified definition, the following highlighted text was removed from the current definition:
- 3(v) "environmental effect" means
  in respect of an undertaking,
  (i) any change, whether negative or positive, that the undertaking may cause in to the environment, including any effect on socio-economic conditions, on environmental health, physical and cultural heritage or on any structure, site or thing including those of historical, archaeological, paleontological or architectural significance and
  (ii) and any change to the undertaking that may be caused by the environment.
- 3(az) "undertaking" [Refer to Recommendation 12.] means
  an enterprise, activity, project, structure, work or proposal, and may include, in the opinion of the Minister, a policy, plan or program; and may also include, in the opinion of the Minister, a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;
  To create this modified definition, the following highlighted text was removed from the current definition:
- 3(az) "undertaking" means an enterprise, activity, project, structure, work or proposal, and may include, in the opinion of the Minister, a policy, plan or program; *that has an adverse effect or an environmental effect* and may also include, in the opinion of the Minister, a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking;"
- 3(al) "person responsible for a contaminated site"
  [Recommendation 26]
  Link existing definition with Section 129.
  Following the designation of a contaminated site for the purpose of remediation or site management, in accordance with section x of the Act, the Minister shall determine which person or persons connected to a contaminated site are persons responsible for a contaminated site and shall be guided by the following considerations, if such information is available or accessible to the Minister:
  (a) when the substance became present over, in, on or under the site;
  (b) in the case of an owner, occupier or operator, or previous owner, occupier or operator of the site
  (i) whether the substance was present over, in, on or under the site at the time that the person became an owner, occupier or operator,
  (ii) whether the person knew or ought reasonably to have known that the substance was present over, in, on or under the site at the time that person became an owner, occupier or operator,
  (iii) whether the presence of the substance over, in, on or under the site ought to have been discovered by the owner, occupier or operator had the owner, occupier or operator exercised due diligence in ascertaining the presence of the substance before the owner, occupier or operator became an owner, occupier or operator, and whether the owner occupier or operator exercised such due diligence.
  (iv) whether the presence of the substance over, in, on or under the site was caused solely by the act or omission of an independent third party,
  (c) in the case of a secured creditor, whether the secured creditor influenced the management of the site in such a way as to cause contamination.

From the *Solid Waste-Resource Management Regulations*

- 2 (e) "beverage" [Recommendation 33]
  Include flavoured milk products in the list of beverages (see section 2(e) of the SWRM regulations)
- 2 (f) "beverage container" [Recommendation 34]
  Expand definition to include a second category of containers that are not sealed by the manufacturer after the beverage is placed in it.

Definitions to Be Eliminated

From Section 3

- 3(c) "adverse effect"
  Replace with the term "adverse environmental effect."
- 3(ak) "person responsible"
  For clarity, replace "person responsible" with specific definitions for the following:
  - "person responsible for a release"
  - "person connected to a contaminated site"
  - "person responsible for a contaminated site"